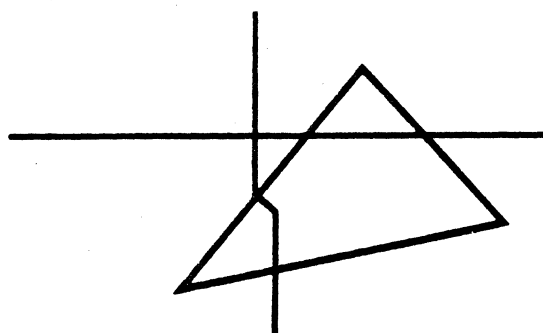


PACIFIC POWER MAPS:

AN ANALYSIS OF THE CONSTITUTIONS
OF PACIFIC ISLAND POLITIES



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OF THE CONSTITUTIONS OF PACIFIC ISLAND POLITIES

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The aim of every political constitution is, or ought to be, first to obtain for rulers men who possess most wisdom to discern, and most virtue to pursue, the common good of the society; and in the next place, to take the most effectual precautions for keeping them virtuous whilst they continue to hold their public trust.

James Madison

Let me add that a bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse...

Thomas Jefferson

Introduction

The inauguration of Hauro I. Remeliik as President of the Republic of Palau, on 31 January 1981, rounds off twenty years of constitution-making and political change in the Pacific Region. In 1962 Western Samoa became independent, shedding New Zealand's rule. It has been followed towards independence, or self-government "in free association" with another entity, by virtually all of the other islands of Melanesia, Micronesia and Polynesia. In French Polynesia and New Caledonia new statutes providing for enlarged (though far from complete) internal autonomy were granted in 1977. Further political change seems imminent in the wake of political disturbances in New Caledonia, changing political alignments in French Polynesia, and the election in France of a Socialist Government.

Elsewhere Pacific peoples now govern themselves, under often elaborate constitutional frameworks derived from Western political tradition. With the onset of self-rule in Palau, under its own Constitution, the time is ripe to take a broad look at Pacific constitutions, and the institutions and processes which they seek to establish and preserve. While there has been much rhetoric about a "Pacific Way," it will be interesting to discover whether twenty years of political initiative, centering on the development of constitutional frameworks for self-rule, has produced diversity rather than uniformity in the islands' political approaches to their often common problems.

Constitutions As Problem-Solving Documents

Pacific entities have been almost unanimous in electing to organize their political structures utilizing a written Constitution. In so doing, of course, Pacific leaders have been guided not only by the advice of their departing rulers but, in some instances, by political necessity. A major component of the independence bargain between the British and their Pacific colonies was agreement on the terms of a written Constitution which was, in turn, submitted for approval within a British statute to the Parliament in London. Similarly, progress towards self-rule in Micronesia has been very significantly intertwined with the development of constitutions compatible with American intentions and preferences.

These pressures no doubt played a role in shaping not merely the detailed provisions of Pacific constitutional documents but the very decision to govern through such a document at all. In many ways this has been a quite ironic development, for constitutions are neither necessary nor sufficient for good government. Elsewhere in the world, the most elaborate of these contrivances has not been able to prevent determined leaders, or well-organized parties, from departing from their provisions or dispensing with the Constitution altogether. Moreover, government disciplined by written documents represents a departure from traditional Pacific approaches to governance, and although the problems of contemporary society are complex and intractable, the fundamental dilemmas of politics are much the same in every time and place. Finally, it is curious that the British and the New Zealanders, in particular, proved so insistent that their Pacific charges not receive independence, or progress to self-rule, without the support of a written Constitution. For although the overwhelming majority of the world's polities do govern through written Constitutions, the British and the New Zealanders express a certain pride in doing without these encumbrances. There may therefore be a certain paternalism symbolized by their determination not to depart from their Pacific colonies without providing a constitutional legacy. It appears that responsible decision makers in these two colonial powers concluded that while their own countries were experienced enough in democratic governance to function pragmatically, it was vital that, in the absence of colonial masters skilled in such matters, the rules be written down as indelibly as possible for Pacific islanders to study, observe and follow.

Pacific Constitutions have been designed as problem-solving documents. They are organized, as are all Constitutions, to confront a series of problems which all political systems must resolve in order to endure. These problems, moreover, are taken up sequentially within each Pacific Constitution. Immersed in the details of constitutional minutiae are responses to fundamental challenges in any political entity anywhere in the world. Some of these might best be expressed in interrogative form. How will political leaders be chosen? Will it be possible to provide for a peaceful, orderly succession when leaders prove unsatisfactory, or die? What role will the State play in island affairs? What limitations may be placed on State power? How may new laws be introduced, old laws modified or abolished, any laws interpreted and enforced? Who are the people to be governed together as a political community? May new groups join, existing ones leave? What are the goals of the people to which constitutional Government must now be dedicated?

The constitutions of the contemporary Pacific reflect the power relationships in place within Pacific societies when independence, or self-government, came to be achieved. They embody the consensus of governing elites within Pacific polities, modified in certain instances by the preferences of the departing colonial power. These constitutions provide formal answers to the basic questions of politics in the Pacific as elsewhere: who governs, for what purposes, through what procedures.

Goals and Symbols—The Purposes of Pacific Political Communities

Pacific constitutions are eloquent in their identification of national goals and the symbols which express them. The opening passages of Pacific Constitutions articulate the goals, ideals and national purposes to which the Constitution, and the political community whose processes it describes, are dedicated. This opening portion, common to all recent Pacific Constitutions (Niue and the Cook Islands excepted), is known as the Preamble.

Preambles reflect constitutional origins. They articulate a consensus about national goals, while at the same time demonstrating the unique excitement that surrounds the birth of any new country. They are products of an irreplaceable national enthusiasm, whether they introduce the Constitution of a new state or the new Constitution of an older polity. Often, though not in the Pacific, preambles establish the goals of a new regime brought to power by illegal (and often violent) means, a regime eager to celebrate, legitimize and extend its achievements. The new rulers seek to use the Constitution to imprint their own personal brand of politics upon the nation's fundamental law.

The Pacific Island Constitutions which form the backdrop of this essay were each written to accompany the birth of a new nation or, alternatively, the re-emergence to sovereignty of an old one. Release from colonial rule, enlargement of national dignity, and the opportunity to develop political solutions free from external control have been developments of singular significance for Pacific peoples. Their Constitutions exhibit the excitement occasioned by independence best in their preambles.

The flavor of some of these opening declarations can be appreciated by a few examples. The Preamble to the Constitution of the Marshall Islands is especially eloquent.

WE, THE PEOPLE OF THE MARSHALL ISLANDS, trusting in God, the Giver of our life, liberty, identity and our inherent rights, do hereby exercise these rights and establish for ourselves and generations to come this Constitution, setting forth the legitimate legal framework for the governance of the Marshall Islands. We have reason to be proud of our forefathers who boldly ventured across the unknown waters of the vast Pacific Ocean many centuries ago, ably responding to the constant challenges of maintaining a bare existence on these tiny islands, in their noble quest to build their own distinctive society. This society has survived, and has withstood the test of time, the impact of other cultures, the devastation of war, and the high price paid for the purposes of international peace and security. All we have and are today as a people, we have received as a sacred heritage which we pledge ourselves to safeguard and maintain, valuing nothing more dearly than our rightful home on these islands. With this Constitution, we affirm our desire and right to live in peace and harmony, subscribing to the principles of democracy, sharing the aspirations of all other peoples for a free and peaceful world, and striving to do all we can to assist in achieving this goal. We extend to other peoples what we profoundly seek from them: peace, friendship, mutual understanding, and respect for our individual idealism and our common humanity.¹

The Fiji Constitution begins with a preamble describing the nineteenth century acceptance by the Chiefs of British rule, notes the economic and political advancement of "all the peoples of Fiji . . . united under a common bond," and closes with a statement of the people's "unshakeable belief that all are entitled to fundamental human rights and freedoms based upon and secured by the rule of law . . ." The Federated States of Micronesia (FSM hereafter) Constitution commences with a review of recent history.

To make one nation of many islands, we respect the diversity of our cultures. Our differences enrich us. The seas bring us together, they do not separate us. Our islands sustain us, our island nation enlarges us and makes us stronger. Our ancestors, who made their homes on these islands, displaced no other people. We, who remain, wish no other home than this. Having known war, we hope for peace. Having been divided, we wish unity. Having been ruled, we seek freedom. Micronesia began

in the days when man explored seas in rafts and canoes. The Micronesian nation is born in an age when men voyage among stars; our world itself is an island. We extend to all nations what we seek from each: peace, friendship, cooperation, and love in our common humanity. With this Constitution we, who have been the ward of other nations, become the proud guardian of our own islands, now and forever.

The closely related concluding phraseology in the FSM and Marshalls' preambles reflects not merely the imitative character of constitution-writing, but as well the shared history of these two entities as they emerge separately, although almost simultaneously, from American trusteeship. The values of Pacific leaders are reflected in the common emphasis on cooperation and respect for tradition. At the same time, difficulties associated with governing multi-island nations scattered across vast distances of ocean account in no small measure for the emphasis on unity. The Second World War struggle between Japan and the United States is reflected too in the Micronesians' plea to be left alone, to live in peace.

Thus these preambles reflect the recent historical experience of the countries concerned as well as the political predicaments faced now and for the foreseeable future.

Some preambles carry a religious message, befitting the customs and traditions of the people concerned. Western Samoa's Constitution begins thusly:

IN THE HOLY NAME OF GOD, THE ALMIGHTY, THE EVER LOVING
Whereas sovereignty over the Universe belongs to the Omnipresent God alone, and the authority to be exercised by the people of Western Samoa within the limits prescribed by His commandments is a sacred heritage; WHEREAS the Leaders of Western Samoa have declared that Western Samoa should be an Independent State based on Christian principles and Samoan custom and tradition; AND WHEREAS the Constitutional Convention, representing the people of Western Samoa, has resolved to frame a constitution for the Independent State of Western Samoa; WHEREIN The State should exercise its powers and authority through the chosen representatives of the people; WHEREIN should be secured to all the people their fundamental rights; WHEREIN the impartial administration of justice should be fully maintained; AND WHEREIN the integrity of Western Samoa, its independence, and all its rights should

be safeguarded; NOW THEREFORE, we the people of Western Samoa in our Constitutional Convention, this twenty-eight day of October 1960, do hereby adopt, enact, and give to ourselves this Constitution.

The Constitution of Nauru makes a similar commitment to fundamental, unifying, religious principles.

WHEREAS we the people of Nauru acknowledge God as the almighty and everlasting Lord and the giver of all good things; AND WHEREAS we humbly place ourselves under the protection of His good providence and seek His blessing upon ourselves and upon our lives; AND WHEREAS we have declared that Nauru shall be a republic; AND WHEREAS a Constitutional Convention representing us has prepared a Constitution for Nauru: NOW THEREFORE we the people of Nauru in our Constitutional Convention this twenty-ninth day of January, One thousand nine hundred and sixty-eight, do hereby adopt, enact and give to ourselves this Constitution to come into force on the thirty-first day of January, One thousand nine hundred and sixty-eight.

Other Constitutions begin by asserting inviolable principles to guide future decision-makers. The Constitution of Kiribati, following a "We the people" opening, goes on to say that

In implementing this Constitution, we declare that

1. the will of the people shall ultimately be paramount in the conduct of the government of Kiribati;
2. the principles of equality and justice shall be upheld;
3. the natural resources of Kiribati are vested in the people and their Government;
4. we shall continue to cherish and uphold the customs and traditions of Kiribati.

Entrenching these kinds of value commitments in the Constitution may not guarantee that present or future political leaders will always be guided by them in reviewing development projects or allocating budgetary resources. However, articulating these values in this way does make explicit underlying principles which

may reassure traditional leaders and others uncertain about the advantages of self-government and political separation from Great Britain. Realizing this is a further reminder that Constitutions are primarily political documents, sensitive to the anxieties and aspirations of the people affected by them.

The Solomon Islands Constitution notes the people's pride in "the wisdom and the worthy customs" of their ancestors and their present realization of "our common destiny." Declaring "as a basis of our united nation" the principles that power belongs to the people "and is exercised on their behalf" by political institutions, and that the "natural resources" of the Solomons are "vested in the people and the government," the draftsmen went on to "agree and pledge" five basic "purposes" for which the Constitution—and, by inference, the Government—has been established.

- (a) our government shall be based on democratic principles of universal suffrage and the responsibility of executive authorities to elect assemblies;
- (b) we shall uphold the principles of equality, social justice and the equitable distribution of incomes;
- (c) we shall respect and enhance human dignity and strengthen and build on our communal solidarity;
- (d) we shall cherish and promote the different cultural traditions within Solomon Islands;
- (e) we shall ensure the participation of our people in the governance of their affairs and provide within the framework of our national unity for the decentralisation of power:

AND for these purposes we now give ourselves this Constitution.

The Papua New Guinea preamble pays homage to the values of unity, tradition ("ancestors—the sources of our strength and origin of our combined heritage"), Christian principles, independence, freedom, popular sovereignty ("all power belongs to the people"), community, national identity, peace ("we reject violence and seek consensus as a means of solving our common problems"), and equality ("that our national wealth, won by honest, hard work be equitably shared by all"). However, this Constitution is unique in the contemporary Pacific, for its preamble goes on to establish a series of "National Goals and Directive Principles," "Basic Rights," and "Basic Social Obligations," all of these preceding the operative

articles of the document. These goals, principles, rights and obligations are elaborate extensions of the basic idea of a preamble: to establish the legal basis for, and the fundamental purposes of, the Constitution itself.

Stylistically, Pacific Constitutional preambles have been of two types: the "we the people" kind, most common in American-influenced entities but not confined to these, and the "whereas" form, which establishes a linked argument and is most prevalent in the British-influenced entities. The Constitution of Tuvalu is a good example of the latter, the style with which New Zealanders might be expected to feel most comfortable.

WHEREAS the Islands in the Pacific Ocean then known as the Ellice Islands came under the protection of Her Most Gracious Majesty Queen Victoria in September 1892 and on 12th January 1916 in conjunction with the Gilbert Islands became known as the Gilbert and Ellice Islands Colony;

AND WHEREAS on 1st October 1975 Her Most Excellent Majesty Queen Elizabeth II was graciously pleased to establish the Ellice Islands as a separate colony under their ancient name of Tuvalu;

AND WHEREAS the people of Tuvalu, acknowledging God as the Almighty and Everlasting Lord and giver of all good things, humbly place themselves under His good providence and seek His blessing upon themselves and their lives;

AND WHEREAS the people of Tuvalu desire to constitute themselves as an Independent State based on Christian principles, the Rule of Law, and Tuvaluan custom and tradition;

NOW THEREFORE the people of Tuvalu hereby affirm their allegiance to her Most Excellent Majesty Queen Elizabeth II, Her Heirs and Successors, and do hereby proclaim the establishment of a free and democratic sovereign nation, of which the following provisions shall form the Constitution.

As is evident from this review, the preamble—often the only part of a Constitution which the people can quote from memory—expresses collective goals and values. It may also summarize a nation's history, its cultural outlook, its ethnic basis. The historical statement may be succeeded by a brief accumulation of

values designed to provide an unarguable framework for constitutional government. Preambles which (by contrast) imbed disputed points of politics or history make the Constitution itself an object of partisan maneuvering, rather than a document whose preliminary commitments reflect a consensus about basic principles and ultimate goals.

NATIONAL SYMBOLS AND CONSTITUTIONAL SUPREMACY

Preambles are often followed by provisions (known as a "supremacy clause") which declare the Constitution to be "the supreme law" of the country. The Tuvalu Constitution, for example, displays a "Chapter I. THE STATE AND THE CONSTITUTION" following the above-mentioned preamble and preceding the second chapter, the Bill of Rights. Chapter I declares:

1. Tuvalu shall be a sovereign democratic State.
2. This Constitution is the supreme law of Tuvalu and if any other law is inconsistent with this Constitution, that other law shall, to the extent of the inconsistency, be void.

Declaring that a Constitution is "supreme" implies, of course, that other laws or regulations inconsistent with it are without legal basis and are thus null and void. An almost identical first chapter is found in the Constitutions of the Solomon Islands (which adds, however, that "Her Majesty shall be the Head of State"), Kiribati, Nauru (described in part 1 as "an independent republic"), Western Samoa (with a section describing its national territory, discussed below), Fiji, Vanuatu, and the Marshall Islands. Constitutional geography may also be found in the opening section of the document. Description of the nation-state and its physical boundaries seems logical, since it defines the area of coverage of the Constitution. At the same time, it may be presumed to be unnecessary, from one point of view, as omission of such a description is not likely to prevent a Constitution—and the laws enacted under it—from being applied to the inhabitants of the polity to which it refers.

Immediately after the preamble, Part I of the Constitution of Western Samoa reads:

1. (1) The Independent State of Western Samoa (hereinafter referred to as Western Samoa) shall be free and sovereign.
- (2) Western Samoa shall comprise the islands of Upolu, Savai'i, Manono, and Apolima in the South Pacific Ocean, together with all other islands adjacent thereto and lying between the 13th and 15th degrees of south latitude and the 171st and 173rd degrees of longitude west of Greenwich.

The Constitution of the FSM contains a more elaborate statement on the "Territory of Micronesia" in its first Article. This statement reflects not only greater uncertainty about the number of entities likely to participate in this federation, but also an effort by lawyers to draft language likely to enhance the FSM's resources.

SECTION 1. The territory of the (FSM) is comprised of the Districts of the Micronesian archipelago that ratify this Constitution. Unless limited by international treaty obligations assumed by the (FSM), or by its own act, the waters connecting the islands of the archipelago are internal waters regardless of dimensions, and jurisdiction extends to a marine space of 200 miles measured outward from appropriate baselines, the seabed, subsoil, water column, insular or continental shelves, airspace over land and water, and any other territory or waters belonging to Micronesia by historic right, custom, or legal title.

SECTION 2. Each state is comprised of the islands of each District as defined by laws in effect immediately prior to the effective date of this Constitution. A marine boundary between adjacent states is determined by law, applying the principle of equidistance. State boundaries may be changed by Congress with the consent of the state legislatures involved.

The remainder of this Article dealing with the national territory addresses a question of interest to some polities, but omitted from most Constitutions. The following two sections of the FSM Constitution develop procedures by which the national territory—that is, the area of coverage of the Constitution—may be enlarged.

SECTION 3. Territory may be added to the (FSM) upon approval of Congress, and by vote of the inhabitants of the area, if any, and by vote of the people of the (FSM). If the territory is to become part of an existing state, approval of the state legislature is required.

SECTION 4. New states may be formed and admitted by law, subject to the same rights, duties, and obligations as provided for in this Constitution.

The Constitution does not provide any procedures for loss of territory, a gap not likely to deter any geographically concentrated dissident group from seceding if it has the power and will do so. The Palau Constitution, which includes a meticulous description of the national territory, is not so reticent about the prospect of losing any of it: "No state may secede from Palau."

The Fiji Constitution leaves the definition of "Fiji" to "Chapter XI—Miscellaneous," in which it is declared:

'Fiji' means the territories which immediately before 10th October 1970 constituted the colony of Fiji and includes any other territories declared by Parliament to form part of Fiji;

This is a neat, tidy, and pragmatic approach likely to appeal to persons impatient with precise geographical measurement. Others might prefer a Constitutional statement which included a claim to resources far from the nation's land mass (comparable in intent to the Act of Parliament creating a 200-mile economic zone). Some Constitutions omit a description, or a definition, of the country altogether, presumably on the grounds that the inhabitants from whom all constitutional authority flows will know who and where they are. What Constitutions do not omit, however, is the supremacy clause.

Constitutions will often contain descriptions of emotionally powerful political symbols representative of the national self-image. These evocations of national unity are intended to embody the national purpose, to weld a people together within a single political community. They may include a coat of arms, a national bird, a constitutionally approved flower. Constitutional flora and fauna are by no means unusual, although their absence from Pacific island documents may suggest that these sorts of constitutional decoration (found in American State Constitutions, for example) may be going out of fashion.

The national anthem—or national song—may be mentioned in the Constitution too, and there may be included as well a description of the national flag (including an explanation for the colors and shapes selected to appear upon this emblem of nationhood). The Tongan Constitution (approved in 1875) states that

The Flag of Tonga (the flag of King George) shall never be altered but shall always be the flag of this Kingdom and the present Royal Ensign shall always be the ensign of the Royal Family of Tonga.

The Cook Islands Constitution (adopted in 1964 by the New Zealand Parliament) was bereft of preamble and political symbols, unless the "Public Seal of the Cook Islands" (kept "in the custody of the High Commissioner"), used "for the authentication of any public document in relation to the government of the Cook Islands," is included in such a category. Since self-government, symbols of nationhood have become inextricably mixed with symbols of partisanship, so that during the 1965-78 period, the Cook Islands flag was in fact the flag of the Cook Islands Party. During 1981 amendments have been proposed by the governing party, the Democrats, to entrench in the Constitution a new Cook Islands Flag and a Cook Islands national anthem. Thus, the "Cook Islands Ensign is hereby declared to be the recognized flag of the Cook Islands," while the "anthem entitled 'Te Atua Mou E' shall be the national anthem of the Cook Islands." The words of this anthem are included in the Constitution, and the ensign is described as follows:

The Cook Islands Ensign shall be a Royal blue ensign. The Union Jack shall occupy the upper staff quarter, having on the fly 15 stars in a symmetrical ring, all of equal size and equal spacing, and the colour of the stars shall be white. The flag proportion of length to breadth shall be of two to one. And it shall mean--Blue--is the colour most expressive of our Nation, it is representative of the vast area of the Pacific Ocean in which the islands of the Cook Islands are scattered. Blue also depicts the peaceful nature of the inhabitants of our islands. Union Jack--indicates our historical association with and membership of the British Commonwealth. The 15 white stars represent the 15 islands of the group.

In some Pacific polities, national contests have been held to select a new song, or design a new flag. Elaborating the symbols of nationhood might be seen both by

governing elites and public alike as a constructive exercise, one which seeks to legitimise the nation's new political status. Elites may seek to promote a deepened awareness of the cultural origins and identity of the newly sovereign polity as well as (in certain instances) draw attention to issues of environmental protection and enhancement.

THE BILL OF RIGHTS

With the exception of the Cook Islands and Niue, Pacific polities moved to their present political status with a Constitution containing a Bill of Rights. In the Cook Islands, 1981 witnessed a significant period of constitutional innovation, with a Bill of Rights being presented to the Legislative Assembly as an amendment to the Constitution provided by New Zealand. The various components of the virtually obsolescent American Trust Territory of the Pacific Islands (Micronesia), the Commonwealth of the Northern Marianas, the Marshall Islands, Palau and the Federated States of Micronesia (FSM) are each equipped with full constitutional paraphernalia, as will be the various state governments being born in Palau and the FSM.

One perhaps obvious point which emerges from a review of these documents is that a Bill of Rights is invariably a component of a written Constitution. This is the case in nearly every country in the world (the U.K. being a significant exception) and is the case for all of the political entities in the Pacific. In none of them does a Bill of Rights exist separately from, or in the absence of, a written Constitution. While Niue has a Constitution but no Bill of Rights, there is no example of the opposite being the case.

A Bill of Rights is not a Constitution, however, these documents serve complementary, but distinct, functions. A Bill of Rights contains provisions which form part of a general code designed to regulate and discipline the exercise of State power. A Bill of Rights is a part of a Constitution—but a very special part. The Constitution as a whole makes contributions to the task of controlling State power, but the kinds of restrictions imposed in a Bill of Rights are of an extraordinary and vital kind.

This is recognized within the Constitutions of the Pacific nations themselves. In many cases, it is more difficult to amend, alter or abolish a Bill of Rights, or portion thereof, than to change other provisions of a Constitution. The Bill of

Rights is given special importance by Constitution-writers in another striking, yet obvious, way. Quite simply, the Bill of Rights comes first! It precedes the other formal provisions of Pacific Constitutions (the preamble and supremacy clause excepted).

The lengthy and often eloquent Bill of Rights found in the Second Article, or Chapter, of most Pacific island Constitutions contains provisions which almost without exception have as their conceptual source the American Bill of Rights (added to the American Constitution after its acceptance and approval by the American States). The language, however, is modernized in these contemporary versions, and, in some instances, two hundred years of American judicial interpretation of the relevant provisions has been taken into account by the authors. In addition, many of these Bills of Rights—to many people, the heart of the Constitution—include guarantees and protections embracing categories of behavior not found in Bills of Rights of greater antiquity. A further interesting feature of Pacific charters is the tendency found in several of them to include provisions describing, and seeking to protect, the "traditional" rights of the people.

Most Bills of Rights contain two distinct kinds of guarantees. One relates to basic "freedoms"; these seek to defend areas of individual behavior against Government interference. The other deals with aspects of judicial procedure. While these provisions too are designed to protect the individual against arbitrary treatment by Government authorities, they relate more to individual behavior in extraordinary circumstances—arrest, trial and punishment—than to the substance of individual behavior and social interaction in "ordinary" situations.

Part II of the Western Samoan Constitution enumerates "Fundamental Rights" enjoyed by all persons, while providing remedies for "enforcement of rights" open to "any person." These rights include: life, personal liberty, freedom from inhuman treatment, freedom from forced labor, a fair trial, rights "concerning criminal law," religion, rights "concerning religious instruction," speech, assembly, association, movement and residence ("All citizens . . . shall have the right to move freely throughout Western Samoa and to reside in any part thereof."), rights "regarding property," and freedom from discriminatory legislation ("All persons are equal before the law and entitled to equal protection under the law.")

The Fijian Constitution, while including many of the rights and freedoms noted above, includes: very detailed provisions regulating the compulsory acquisition of property by the State; protection for privacy of home and other

property; protection of persons detained under emergency laws. For the most part, these declarations on individual rights seek to guarantee a range of fundamental freedoms while at the same time permitting a wide range of police powers to continue to function in the interests of public order. In so doing, many provisions become remarkably complicated, as the various exceptions and contingencies requiring an abridgement of a right are enumerated.

An example of this effort to achieve balance between individual autonomy and collective power is found in the very first provision of the Bill of Rights of the Marshall Islands' Constitution. It begins boldly:

Every person has the right to freedom of thought, conscience, and belief; to freedom of speech and of the press; to the free exercise of religion; to freedom of peaceful assembly and association; and to petition the government for a redress of grievances.

However:

Nothing in this Section shall be construed to invalidate reasonable restrictions imposed by law on the time, place, or manner of conduct, provided

- (a) the restrictions are necessary to preserve public peace, order, health, or security or the rights or freedoms of others;
- (b) there exist no less restrictive means of doing so; and
- (c) the restrictions do not penalize conduct on the basis of disagreement with the ideas or beliefs expressed.

In this and in subsequent provisions, the drafters of this Bill of Rights have sought to express in plain language a commitment to certain cherished values, while at the same time incorporating as succinctly as possible the boundaries for the expression of these values likely to be upheld by Courts in adjudicating conflicts. Clearly the authors have sought to anticipate (and, possibly, forestall) constitutional interpretation by writing, in the Bill of Rights itself, the kinds of judicial adjustments most likely to be made in any event. This has been done, in most instances, in language as sympathetic as possible to the value—or "right"—being protected.

The Marshalls' Bill of Rights is an extensive one indeed. It includes: freedom of thought, speech, press, religion, assembly, association, and petition; protections against slavery and involuntary servitude; protections against "unreasonable search and seizure"; right to due process and fair trial (with a ten-section description of the rights and procedures associated with these complementary concepts); right to just compensation for land taken for public use; protection against "cruel and unusual punishment"; right to a writ of habeas corpus; protection against punishment due to ex post facto laws (retrospective legislation) or bills of attainder (which identify for punishment a named or "readily identifiable" person or group); protection against being compelled to provide lodgings for soldiers; protection against imprisonment for debt; right to conscientious objection in the event of conscription; right to equal protection under the law, and freedom from discrimination; right to personal autonomy and privacy ("All persons shall be free from unreasonable interference in personal choices that do not injure others and from unreasonable intrusions into their privacy"); right to participate in the electoral process, and to use the judicial process "as a means of vindicating any interest preserved or created by law, subject only to regulations which limit access to courts on a non-discriminatory basis"; right to "health care, education, and legal services"; "right to responsible and ethical government"; "other rights" not enumerated in the Constitution.

The Pacific islands Bills of Rights are not always so comprehensive, or so sweeping, as the Marshalls'. The Marshalls document is interesting too because its final few rights were neither protections from Government action, nor judicial safeguards, but were rather commands to Government to carry out functions, and provide services, defined as fundamental "rights" of all people. Enumerating goals and objectives of Government policy is not often found in Pacific Bills of Rights, however much the idea of a "right" to health care, education, legal services, ethical government, environmental protection, privacy, employment, and other values and qualities associated with a decent life may now form part of a world-wide popular culture.

The Niue Constitution (enacted by the New Zealand Parliament in 1974) and the Cook Islands Constitution have lacked formal statements of rights, reflecting the preferences of their New Zealand advisors who adhered to the notion that parliamentary power ought not to be so restrained. However, the proposed

amendments to the Cook Islands Constitution, in 1981, do include for the first time a Bill of Rights for Cook Islanders. It is a succinct, but binding, statement of "fundamental human rights and freedoms."

It is hereby recognised and declared that in the Cook Islands there exist and shall continue to exist, without discrimination by reason of race, national origin, colour, religion, opinion, belief, or sex, the following fundamental human rights and freedoms:

- (a) the right of the individual to life, liberty, and security of the person, and the right not to be deprived thereof except in accordance with law:
- (b) the right of the individual to equality before the law and to the protection of the law:
- (c) the right of the individual to own property, and the right not to be deprived thereof except in accordance with law:
Provided that nothing in this paragraph . . . shall be construed as limiting the power of Parliament to prohibit or restrict by Act the alienation of Native land . . .
- (d) Freedom of thought, conscience, and religion:
- (e) Freedom of speech and expression:
- (f) Freedom of peaceful assembly and association.

This attempt to place limitations on the doctrine of parliamentary supremacy was in turn qualified by a second section relating to the exercise of these "rights and freedoms."

It is hereby recognised and declared that every person has duties to others, and accordingly is subject in the exercise of his rights and freedoms to such limitations as are imposed, by any enactment or rule of law for the time being in force, for protecting the rights and freedoms of others or in the interests of public safety, order, or morals, the general welfare, or the security of the Cook Islands.

Following this section is a lengthier passage detailing the protections individuals may expect in judicial proceedings. Other Pacific polities following the parliamentary model, based on British practice, have also chosen to depart from British and New Zealand practice by governing with written Constitutions

containing formal statements of individual rights. The second Chapter of the Tuvalu Constitution protects "fundamental rights and freedoms of the individual," including "protection for the privacy of his home and other property," "freedom of conscience," "freedom of expression," "protection of freedom of assembly and association," "protection of freedom of movement," protection against discrimination, and lengthy protections to be invoked in judicial settings. This section of the Constitution extends to eighteen separate sections, running to fourteen pages. Other former British possessions in the Pacific devote comparable attention to the protection of individual rights and the elaboration of procedures for the defense of accused persons. These include Kiribati, Fiji, and the Solomon Islands. Nauru and Papua New Guinea, which employ parliamentary institutions, also include in their Constitutions elaborate statements of rights and protections. Unexpectedly, the American-influenced FSM includes the briefest "Declaration of Rights" of any of the Pacific entities (Niue and the French possessions, New Caledonia and French Polynesia, excepted, as these remain silent on such matters). It is fifteen sentences in length, organized into thirteen separate sections.

SECTION 1. No law may deny or impair freedom of expression, peaceable assembly, association, or petition.

SECTION 2. No law may be passed respecting an establishment of religion or impairing the free exercise of religion, except that assistance may be provided to parochial schools for non-religious purposes.

SECTION 3. A person may not be deprived of life, liberty, or property without due process of law, or be denied the equal protection of the laws.

SECTION 4. Equal protection of the laws may not be denied or impaired on account of sex, race, ancestry, national origin, language or social status.

SECTION 5. The right of the people to be secure in their persons, houses, papers, and other possessions against unreasonable search, seizure, or invasion of privacy may not be violated. A warrant may not issue except on probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized.

SECTION 6. The defendant in a criminal case has a right to a speedy public trial, to be informed of the nature of the accusation, to have counsel for his defense, to be confronted with the witnesses against him, and to compel attendance of witnesses in his behalf.

SECTION 7. A person may not be compelled to give evidence that may be used against him in a criminal case, or be twice put in jeopardy for the same offense.

SECTION 8. Excessive bail may not be required, excessive fines imposed, or cruel and unusual punishments inflicted. The writ of habeas corpus may not be suspended unless required for public safety in cases of rebellion or invasion.

SECTION 9. Capital punishment is prohibited.

SECTION 10. Slavery and involuntary servitude are prohibited except to punish crime.

SECTION 11. A bill of attainder or ex post facto law may not be passed.

SECTION 12. A citizen of the (FSM) may travel and migrate within the Federated States.

SECTION 13. Imprisonment for debt is prohibited.

It is worth noting, moreover, that the Constitutions of each of the separate States of the FSM—Truk, Yap, Ponape, and Kosrae—contain either a Bill of Rights (Truk and Yap, eighteen sections), statement of "Civil Rights" (Ponape, twelve sections), or "Declaration of Rights" (Kosrae, seventeen sections) intended further to protect and enhance the individual rights and liberties of their inhabitants. The Constitution of the Northern Marianas (described in its preamble as "the embodiment of our traditions and hopes") contains as its first Article a ten-section statement of "Personal Rights." These include some of the virtually universal protections—freedom of religion, speech, press and assembly; protection against ex post facto laws and bills of attainder; protection against unreasonable search and seizure (including restrictions on "wiretapping" and "electronic eavesdropping"); protections in criminal prosecutions; guarantees of due process of law, trial by jury, and equal protection of the laws; protection against compulsory "quartering" of soldiers—as well as a few less common statements.

The right of privacy, for example, is described thusly. "The right of individual privacy shall not be infringed except upon a showing of compelling interest." This statement both enunciates a goal and balances it against circumstances likely to lead to its abandonment in any event. Another goal established as a "right" is not, however, similarly modified. "Each person has the right to a clean and healthful public environment." This, of course, is an objective to which tiny Pacific islands are likely to be especially sensitive.

Micronesian Constitutions are interesting too in their insistence on the preservation of "traditional rights," even as they adopt American-inspired constitutional orientations and procedural patterns in law and politics. Thus the Northern Marianas' statement of "Personal Rights" includes a protection against laws "prohibiting the traditional art of healing." The FSM Constitution includes a separate Article, directly following the "Declaration of Rights," entitled "Traditional Rights." It is brief, intended to reassure (and hence politically motivated), and innovative.

SECTION 1. Nothing in this Constitution takes away a role or function of a traditional leader as recognized by custom and tradition, or prevents a traditional leader from being recognized, honored, and given formal or functional roles at any level of government as may be prescribed by this Constitution or by statute.

SECTION 2. The traditions of the people of the (FSM) may be protected by statute. If challenged as violative of Article IV, protection of Micronesian tradition shall be considered a compelling social purpose warranting such governmental action.

SECTION 3. The Congress may establish, when needed, a Chamber of Chiefs consisting of traditional leaders from each state having such leaders, and of elected representatives from states having no traditional leaders may provide for an active, functional role for them.

One of the interesting features of this Article lies in Section 2, in which it is explicitly stated that "traditions," protected by public Act, will be permitted to override individual rights (described in Article IV, the "Declaration of Rights" referred to earlier). In turn, Section 3 permits a separate legislative chamber to be established to represent traditional leaders, so as further to ensure that Micronesian customs and traditions may be guarded against Westernization. While

the Ponape State Constitution includes a separate Article containing the Sections 1 and 2 given above, the other Micronesian States declare simply that "Due recognition shall be given to traditions and customs in providing a system of law, and nothing in this Article Bill of Rights shall be construed to limit or invalidate any recognized tradition or custom, except as otherwise provided by law."

This review of Bills of Rights in Pacific Constitutions suggests that while there is great diversity of language, and a tendency to adapt these statements to the circumstances of each political entity, there is nevertheless at the same time a certain universality of approach as well. Certain values are emphasized in each Constitution. These values are deemed to be so important that despite the other differences which distinguish Fiji from Ponape, Palau from the Cook Islands, Tuvalu from Yap, in each of these entities (and others too) these values have been singled out for special mention and protection. Whether these values will be protected in practice in each entity, in all the circumstances which may arise in the future, may be questioned. But the importance of the values themselves is apparant in their elaboration in these Constitutions, coming as they do before any mention of Government powers or legislative procdures. Editorially, the people come first in Pacific Constitutions.

It may be expected that elaboration of individual rights will not only have an effect on Government practice, but may contribute as well to the political education of the citizenry. Establishing in the fundamental law of the polity the rights and freedoms of the people as well as, in some instances, the goals of the nation and the responsibilities or obligations of its people, may serve to educate leaders and followers alike in the norms and customs associated with a democratic polity.

In essence, a Bill of Rights contains protections against arbitrary treatment of the people by the State. Such a document seeks to make more permanent rights and freedoms which may be in danger of abridgement, or which may be described as fundamental to a polity seeking to conform to democratic standards. The choice of values to be enshrined, and the language chosen, will vary according to time, circumstances, and the particular anxieties and experiences of the people concerned.

Whatever differences people may have about the actual language used or the particular protections given, Bills of Rights address themselves to a specified range of areas summarized above. These are quite simply the kinds of challenges to

which Bills of Rights are responsive. In effect, they seek to identify the main, irreducible components associated with the concept of "justice" in the modern world. This is, however, an expansive term.

In Bills of Rights, "justice" is defined not for a philosophical purpose but for the more practical objective of providing individuals with legally enforceable protections against its infringement by the State. Thus Bills of Rights seek to promote values which are both vital and realizable. Bills of Rights do not address themselves to the breadth of the human condition, in which injustice may be found in myriad forms. Loneliness may be unjust, but Bills of Rights do not normally include guarantees for the right of companionship and sociability. Injustice takes many forms, but not all forms of injustice may be constructively confronted in a Bill of Rights.

Dorothy's plaintive plea in The Wizard of Oz centers on an injustice with which all humans may identify. She sings: "If happy little bluebirds fly beyond the rainbow, why, oh why, can't I?" Of course it is unfair that birds can fly and humans cannot, but a Bill of Rights is not likely to provide the people with feathers and wings. What a Bill of Rights can do is to inform people of their rights, enlarge opportunities for political participation, and identify areas of consensus about fundamental political and legal values.

THE STRUCTURE OF GOVERNMENT

Format

Less emotionally evocative components of Constitutions follow the articulation of national goals and the identification of individual rights. These subsequent Articles may be no less important, however, for they describe in great detail the structures of government, their powers and responsibilities, as well as the procedures to be used in selecting the nation's legislators and political leaders. For the most part, these documents record with considerable care the already accepted practices followed in government administration and electoral law. Thus the remainder of the Constitution, despite controversy surrounding particular portions during its development, principally embodies a public consensus about electoral procedures and the character of the State. There may be value, of course, in

recording in a single document the conventions and customs associated with democratic government, not merely to further ensure their continuity, but to identify their main features for the benefit of leaders and citizens alike. In addition, including the basic democratic procedures of government in a written Constitution provides people with opportunities to question practices which may seem inappropriate, and to challenge departures from what would otherwise be unwritten, and hence unenforceable, conventions.

The basic layout of Pacific Constitutional documents varies only slightly from one country to the next. Following the preamble, and chapters establishing the supremacy of the Constitution and the "Fundamental Rights and Freedoms of the Individual," for example, the Tuvalu Constitution includes a chapter defining "Citizenship" in this new nation. This is followed in turn by chapters on: the Governor-General; the Executive; Parliament; the Judiciary; the Public Service; Finance; and a catch-all "Miscellaneous" chapter providing definitions (for "the Crown," "the Commonwealth," and other terms used in the Constitution) and various clauses elaborating on powers, functions and procedures described in the earlier chapters. The Kiribati Constitution omits the discussion of the Governor-General but includes a separate section (following the chapter on finance) dealing with "Banaba and the Banabans." This latter chapter may be compared to chapters in other constitutions in polities in which the unity of the nation itself is subject to challenge from a group holding different loyalties.

The Fiji Constitution conforms to the Tuvalu example given above with two interesting exceptions. Between chapters on "Service Commissions and the Public Service," and "Finance," may be found a constitutionally entrenched set of provisions describing "The Ombudsman." Secondly, as in many Constitutions, the legislature—"Parliament"—is described before the executive. There is intended to be a hierarchical significance in the arrangement of constitutional chapters. Power flows from the people—their rights are not to be infringed. The Head of State represents the people, as the tangible embodiment of the nation and its traditions. The legislature includes the people's representatives—their right to deny financial supply to Governments, or to oust them altogether, is fundamental. Thus the arrangement of constitutional chapters may not be haphazard, but may represent a perspective on the relationship between a people and various political institutions within the fabric of the State.

The Constitution of Western Samoa includes the chapters noted above (with "The Executive" preceding "Parliament"), and adds two other sections on "Land and Titles" and "Emergency Powers" as well as a section found in many Constitutions, providing "Transitional" arrangements bridging the pre-Constitution and post-Constitution periods (declaring continuity of laws, obligations, legal proceedings and office holders).

Statements of "Emergency Powers" and "Transitional Provisions" are included in the Nauru Constitution as well. The Cook Islands Constitution followed this structure when adopted in 1964: Part I on "The Government of the Cook Islands" (describing, in turn, "The Head of State," "The High Commissioner of the Cook Islands," and "The House of Arikis of the Cook Islands"); Part II, "The Executive Government of the Cook Islands: (describing "Cabinet," "The Executive Council" and "The Seal of the Cook Islands"); Part III, "The Legislative Government of the Cook Islands," relating to "The Legislative Assembly" (to be renamed "Parliament" in the 1981 proposed amendment); Part IV, "The Judiciary," describing "The High Court," "The Land Court," "The Land Appellate Court," "Justice of the Peace," and "The Judicial Service Commission" as well as provisions for the appointment (and salaries) of judges and commissioners, appeals from the High Court, and the appropriate oaths to be taken by judges and commissioners. These chapters were followed by ones on "The Public Revenues of the Cook Islands," "The Cook Islands Public Service" and "Transitional Provisions." Not surprisingly, the Niue Constitution conforms to this pattern with one interesting point of distinction: a chapter on "Health, Education, and Other Social Services" (sandwiched between "The Public Revenues of Niue" and "The Niue Public Service") detailed Cabinet's obligation to maintain hospitals, schools and "other institutions and services . . . necessary to provide a reasonable standard of living for the people of Niue and to secure their economic, social, and cultural welfare."

The space allocated in Pacific Constitutions to describing the structure of Government is impressive. The Tuvalu Constitution is one example. Its preamble is half a page. The Chapter on "The State and The Constitution" is two sentences in length. The Bill of Rights occupies 14 pages. Provisions on citizenship account for another three. A section on "The Governor-General" takes up most of a page. The Executive (Prime Minister and Cabinet) is described in five pages. Parliament is discussed in a further seven pages. Four pages are reserved for the Judiciary,

three and a half for the Public Service, three more for Finance, while the remaining four and a half pages of this fifty-four page document tidy up a range of miscellaneous items.

These proportions are found in other Constitutions too. The Nauru Constitution contains an eight-page Bill of Rights, two pages for the "President and Executive," five for the Legislature, two for the "Judicature," and two and a half each for Finance and the Public Service.

Approaches to Democratic Government

Political scientists have identified several basic dichotomies useful in describing structural arrangements in democratic political systems. One dimension relates to the distribution of power between a central authority, on the one hand, and other territorial authorities. Is the local and regional government (if any) subordinate to the legislative power of the central government? Or are they more nearly co-equal in responsibilities and prerogatives? May local governments have their powers and boundaries modified, or their existence discontinued altogether, through action by the central government? Or do sub-national political authorities have a more durable life of their own, insulated to some degree from the whims or aspirations of national elites?

Another dimension relates to the legislative power. Is the law-making function divided between two houses of the legislature? Or is the legislative power embodied in a one-house chamber? Do sub-national territorial authorities enjoy special protections based upon the method of legislative representation? Or is the nation viewed as a single constituency, with the population principle—one person, one vote—employed exclusively in the apportionment of electorates?

A third major dimension revolves about the power of the executive. Is the executive chosen independently of the legislature? Is the executive given a fixed and definite term of office? Does the chief executive hold an elected seat with the legislative chamber? Or is the executive chosen amongst the members of the legislature? Does the executive retain power only so long as the government retains majority support within the legislature? May elections be held at irregular intervals, corresponding to fluctuations in support for different factions within the legislative assembly?

Pacific polities may be distinguished from one another by the way in which their political systems respond to these and related inquiries. The following table seeks to paint a broad picture of the political structures to be found in the various Pacific polities.

It is evident that, reflecting their colonial experience and the preferences of new governing elites, the Pacific polities are characterized by some considerable diversity. Nevertheless certain broad patterns are exhibited and, in broad terms, there is an apparent preference for unitary political systems, utilizing a unicameral legislature, a symbolic Head of State (often reflecting Commonwealth membership), and a parliamentary system in which the executive—known generally as the Cabinet, headed by a Prime Minister—is formed from amongst the political majority in the legislature. The American approach, utilizing "separation of powers" and described as "presidential" in the table, is significantly less popular. Of course in practice traditional authorities may play important roles and, in any event "mixed" models modify the British parliamentary form in situations in which, for instance, a High Commissioner may intervene successfully to overturn local legislative and executive preferences. The structural traits distinguishing Pacific polities from one another will now be examined in greater detail.

Federal systems are found in Palau (or Belau) and the FSM. Thus the latter Constitution includes an article on "Levels of Government" and another on "Powers of Government," seeking to allocate powers and responsibilities amongst national, state and local governments. Provisions of this nature may be found in Pacific Constitutions for non-federal entities as well, when internal politics suggest a need to maintain important local political structures while circumscribing national powers. The Solomon Islands—a multi-island entity whose national unity may be somewhat fragile—includes in its Constitution a chapter on "Provincial Government" (two sentences long) intending to divide the Solomons into provinces, with boundaries, government structures and roles for traditional chiefs to be determined by Parliament.

Federal polities normally function with bicameral national legislatures, in which one chamber's representatives are allocated nation-wide according to population, while the other chamber's representatives represent the federation's constituent units—states or provinces—equally. In such unions, bicameral legislatures so constituted embody the federal bargain, or compromise, designed to preserve the autonomy of lightly populated members against possible domination by larger entities. Within the Pacific, however, this federal pattern is followed,

TABLE I: TYPES OF POLITICAL SYSTEMS IN PACIFIC POLITIES

<u>Country</u>	<u>Political Status</u>	<u>Type of Executive</u>	<u>Type of Legislature</u>	<u>Distribution of Power</u>	<u>Head of State</u>	<u>Head of Government</u>
American Samoa	Unorganized, Unincorporated, U.S. territory	Presidential	Bicameral	Unitary	President of the U.S.A.	Governor - ultimate responsibility with the President, acting through the Secretary of the Interior
Cook Islands	self-governing, in free association with New Zealand	Parliamentary	Unicameral	Unitary	Queen Elizabeth II	Prime Minister
Fiji	Independent	Parliamentary	Bicameral	Unitary	Queen Elizabeth II	Prime Minister
French Polynesia	overseas territory of France	Parliamentary	Unicameral	Unitary	President of the Republic of France	High Commissioner
Guam	Unincorporated, organized, U.S. territory	Presidential	Unicameral	Unitary	President of the U.S.A.	same as American Samoa
Kiribati	independent	mixture of Presidential & Parliamentary models	Unicameral	Unitary	The Beretitenti of Kiribati	
Nauru	independent	Parliamentary	Unicameral	Unitary	The President of Nauru	
New Caledonia	overseas territory of France	Parliamentary	Unicameral	Unitary	same as French Polynesia	

TABLE I (continued)

<u>Country</u>	<u>Political Status</u>	<u>Type of Executive</u>	<u>Type of Legislature</u>	<u>Distribution of Power</u>	<u>Head of State</u>	<u>Head of Government</u>
Niue	self-governing, in free association with New Zealand	Parliamentary	Unicameral	Unitary	Queen Elizabeth II	Premier
Papua New Guinea	Independent	Parliamentary	Unicameral	Unitary	Queen Elizabeth II	Prime Minister
The Solomon Islands	Independent	Parliamentary	Unicameral	Unitary	Queen Elizabeth II	Prime Minister
Tokelau	not fully self-governing; dependency of New Zealand	mixture of parliamentary and pre-parliamentary models	Unicameral	Unitary	Queen Elizabeth II	Secretary of Foreign Affairs, New Zealand Government
Tonga	independent	constitutional monarchy/parliamentary	Unicameral	Unitary	The King of Tonga	
Tuvalu	independent	Parliamentary	Unicameral	Unitary	Queen Elizabeth II	Prime Minister
<u>T.T.P.I.</u>	(as anticipated)					
Commonwealth of the Northern Marianas	Commonwealth in Political Union with the U.S.A.	presidential	Bicameral	Unitary	Governor/President of the U.S.A.	Governor
F.S.M.	self-governing, in free association with the U.S.A.	mixture of presidential & parliamentary models	Unicameral	Federal	President of the F.S.M	
The Marshall Islands	same as above	Parliamentary	Unicameral	Unitary	President of the Marshall Islands	

TABLE I (continued)

<u>Country</u>	<u>Political Status</u>	<u>Type of Executive</u>	<u>Type of Legislature</u>	<u>Distribution of Power</u>	<u>Head of State</u>	<u>Head of Government</u>
Belau (Palau)	same as above	Presidential	Bicameral	Federal	President of Belau (Palau)	
Vanuatu	independent	Parliamentary	Unicameral	Unitary	President of Vanuatu	Prime Minister of Vanuatu
Western	independent	Parliamentary	Unicameral	Unitary	Malietao Tanumafili II (surviving royal title holder, constitutionally specified)	Prime Minister

surprisingly, only in the relatively compact and lightly populated entity of Palau. The much more diffuse FSM is virtually unique among federations in maintaining a one-house national legislature, containing members allocated using both the population and state equality principles of representation. Other Pacific polities which are not federations, however, have established bicameral national legislatures. As in most federations, each chamber represents a distinct response to the basic challenge of democratic government: who shall rule?

Thus in American Samoa, a unitary political system with the status of a United States territory not fully incorporated into the American system, the House of Representatives represents the people as a whole, and are chosen by them in popular elections. The Senate, however, represents the matai, or chiefs. Only matai may serve in the Senate, and only matai may select Senators, who are chosen "according to Samoan custom" (through discussion at a meeting of all matai within a legislative district, with the choice arrived at by "consensus"). Each legislative chamber reflects a separate kind of answer to the problem of selecting the political leadership for this society.

In Western Samoa, by contrast, only one principle is used for selecting representatives in the Fono, or Parliament. Only matai may stand for office, and only matai may vote. Only persons not part of the Samoan cultural and familial network, known as "individual voters," have the right—apart from matai—to participate in national elections. These "individual voters"—who embody the principle of universal suffrage—are entitled to two (of 47) representatives in the Fono. It might have been equally plausible, though not necessarily more practical or efficient, to have expected to find these two separate principles for political choice-making to be represented by separate legislative chambers (as in American Samoa) rather than alongside one another in the same legislature.

Fiji's Constitution too employs two approaches to legislative composition. The allocation of members in the Fiji House of Representatives, a delicate political subject, is according to ethnic group: Fijian; Indian; European (or 'other'). The Senate, in turn, is selected by political groups—the Government and the Opposition—augmented by traditional chiefly authority. In practice, as the political groups reflect the ethnic divisions paramount in Fijian politics, the two legislative chambers are complementary. Constitutionally, however, each chamber has a different rationale, a distinct approach to organizing the polity for decision-making purposes.

The Commonwealth of the Northern Mariana Islands, although non-federal, also utilizes a bicameral legislature. The rationale for it is important. The House embodies the familiar democratic formula designed to maintain the equal value of every vote: representatives are allocated to legislative districts comparable in population size. The Senate, however, reflects the multi-island nature of this entity, and the disproportionate size of one of the islands (Saipan) in relation to the others. Thus the very existence of the Senate is designed to reassure more lightly populated islands that they will not be submerged within the overall entity, by providing an institutional mechanism for them to seek to promote and defend their interests. The Senate, therefore, is not chosen strictly according to population, but in a way designed to provide islands with representatives to which they would not be "entitled" were population criteria to be strictly followed.

The Marianas' approach to legislative representation is shared by other Pacific polities comprised of a number of scattered islands. All of the Pacific countries not already noted above maintain unicameral legislatures. Some of them—the Cook Islands, Kiribati, the Marshall Islands—guarantee representation to islands without seeking to determine, or periodically measure, whether islands with equal numbers of representatives contain comparable numbers of people. In many instances significant discrepancies would be found, but the legislative arrangements provided in the Constitution are part of the terms by which national unity and political stability are promoted. This is so on Niue too, for in this one-island polity's legislative assembly, each of Niue's fourteen villages—irrespective of its population (and there are major differences among them)—is entitled to one representative, augmented in turn by six representatives chosen by the voters of the entire island organized as a single constituency. In this way, once more two representational principles are at work: one protecting each local unit, the other favoring larger numbers of people identified as "the national interest."

Federalism and bicameralism are two features which distinguish the constitutions of Pacific polities from one another. As noted, elsewhere in the world these structural characteristics often go hand in hand. However, in the Pacific, one of the two federal polities is unicameral while some of the multi-island polities, while unitary in their political character, seek to protect the interests of inhabitants of less heavily populated islands either through bicameralism or through modifications to the population principle in allocating representation. Table II seeks to summarize some important features of Pacific island legislatures.

TABLE II: LEGISLATIVE SYSTEMS IN PACIFIC POLITIES

<u>Country</u>	<u>Type of Legislature</u>	<u>Basis of Representation</u>	<u>Frequency of Elections</u>	<u>Role of Legislators* to Population</u>
American Samoa	Bicameral- The Fono = The Senate + House	Senate - representation of <u>matai</u> ; House - popular representation	Senate - 4 years House - 2 years	1: 1666 (Senate) 1: 1500 (House) 1: 789 (Fono)
Cook Islands	unicameral- Parliament	popular representation + guarantees for island representation	5 years	1: 818
Fiji	bicameral Parliament = House of Representatives + Senate	House - representation of ethnic groups; Senate - representation of political groups and traditional authority	5 years	1:26,727 (Senate) 1:11,308 (House) 1: 7,946 (Parliament)
French Polynesia	unicameral - Territorial Assembly	popular representation + guarantees for island representation	5 years	1: 4667
Guam	unicameral - Senate	popular representation	2 years	1: 5476
Kiribati	unicameral - The Maneaba ni Maungatabu	popular representation + some guarantees for island representation	4 years	1: 1571
Nauru	unicameral - Parliament	8 constituencies, territorially based	4 years	1: 403
New Caledonia	unicameral - Territorial Assembly	popular representation	5 years	1: 3878
Niue	unicameral - The Niue Assembly	equal representation for each village	3 years	1: 200

TABLE II (continued)

<u>Country</u>	<u>Type of Legislature</u>	<u>Basis of Representation</u>	<u>Frequency of Elections</u>	<u>Role of Legislators* to Population</u>
Papua New Guinea	unicameral - The National Parliament	popular representation in "open electorates" and "provincial electorates"	5 years	1:27,438
The Solomon Islands	unicameral - The National Parliament	popular representation	4 years	1: 4120
Tokelau	unicameral - The Fono	equal representation for each island group	3 years	1: 266
Tonga	unicameral - The Legislative Assembly	equal representation for Nobles and the People (7 each), + representation for Privy Councillors and Cabinet Ministers	3 years	1: 5 (nobles) 1:12,857 (people) 1: 6,429 (nobles and people; (i.e., all elected representatives) 1:4,286 (The Legislative Assembly)
Tuvalu	unicameral - Parliament	popular representation + guarantees for island representation	4 years	1: 750
<u>T.T.P.I. -</u>				
Commonwealth of the Northern Marianas	bicameral - N.M. Commonwealth Legislature = The Senate + The House	State - representation of islands (in districts) House - representation by population	Senate 4 years for first two in each district 2 years for third; House - 2 years	1: 2039 (Senate) 1: 1311 (House) 1: 798 (Commonwealth) Legislature
F.S.M.	unicameral - The Congress of the F.S.M.	equal representation (1) for each state (4), + representation by population	Members elected by state equality, 4 years; other Members, 2 years	1: 6429 (numbers of legislators in state legislatures not included)

TABLE II (continued)

<u>Country</u>	<u>Type of Legislature</u>	<u>Basis of Representation</u>	<u>Frequency of Elections</u>	<u>Role of Legislators* to Population</u>
The Marshall Islands	unicameral - The Nitijela	popular representation + guarantees for island representation	4 years	1: 909
Belau (Palau)	Bicameral - Olbiil Era Kelulau = House of Delegates + Senate	Senate - equal representation (1) for each state (16); House - representation by population	4 years	1: 938 (Senate) 1: 833 (House) 1: 441 (Olbiil Era Kelulau) (numbers of legislators in state legislatures not included)
Vanuatu	unicameral - Parliament	popular representation	4 years	1: 2887
Western Samoa	unicameral - Fono	representation of matai (45 members) + representation for persons on the individual voters' roll (2 members)	3 years	1: 3234

*NOTE: Comparable figures would reveal significant variations in ratios of numbers of legislators to numbers of eligible and enrolled voters, respectively.

As in the earlier table comparing broader components of Pacific political systems, so too in this table there are broad patterns but, perhaps surprisingly, significant diversity as well. The population principle for determining legislative representation, identified by the United States Supreme Court as (in effect) the sole basis compatible with democratic principles (excluding the special circumstances relating to the composition of the United States Congress), is significantly modified to permit the attainment of other objectives. These include unity (as in the American example), so that lesser populated islands are given representation to which their population numbers might not otherwise "entitle" them, as well as the preservation of traditional values and expectations (as in the representation of matai). In other ways, such as the size of Pacific Legislature and their relationship to population numbers, the frequency of elections, and other subjects not summarized in the table (choice of Speaker, development of committee structures, the use of indigenous languages and so on), the legislative systems of Pacific polities are characterized more by diversity than by uniformity of approach. It is doubtful, moreover, that considerations of principle dictated the greater variation in ratios of legislative size to population, for example. Is there an appropriate ratio for a given society? Is there an optimum size for legislatures, a balance which best achieves democratic representation and maximum efficiency? Is there an especially desirable period which ought to elapse, between elections, to permit governments to govern? How frequent ought elections to be held? On these and other questions, political science has no fixed answers. It should not be too surprising that Pacific constitution-makers have chosen to experiment with a variety of responses to these and other questions.

If there is an absence of accepted criteria to assess (in the abstract) choices made in organizing legislative systems, nevertheless there is some preference for retaining as low a ratio as possible between the elected representative and the people. If "direct democracy" is not possible, then at least small constituencies permit a close relationship with the legislator and hence may be thought of as "more democratic." This is not always possible and in large polities it becomes quite impossible indeed. For example, the ratio of legislators (only in the Congress, excluding therefore the state legislatures) to population is 1:450,000. The ratio in the state of Hawaii is broadly comparable to that of Fiji: 1:35,480 (Senate); 1:17,392 (House); 1:11,671 (State Legislature). Nevertheless democratic theorists might look approvingly at the ratios found in Niue, Nauru, the Cook Islands, Tokelau, Tuvalu, the Northern Marianas, the Marshall Islands, and elsewhere too for

in such circumstances it may become more difficult for the State to come to be regarded as alien and unapproachable. In Belau, when the state legislatures are taken into account as well, it may be argued that the ratio has been reduced to as slim a proportion as may be possible, so that the boundary between "direct" and "representative" democracy becomes exceedingly indistinct.

Another way in which Pacific entities may be distinguished from one another is in their organization of the executive functions of government. Tokelau relies in essence upon traditional leadership, augmented by the Tokelau Public Service supported by New Zealand assistance. It is moving gradually towards a parliamentary model of government, however, utilizing a unicameral body for discussion and law-making known as the Fono. Although vastly different in so many respects, Tonga too is a mixed polity, utilizing parliamentary forms and structures immersed in a traditional setting in which the substance of power remains with the King and the nobles. Although tradition plays a role in any political system, the Pacific polities fall neatly for the most part into the two democratic models of government: parliamentary (or British-influenced), and presidential (the American approach).

In the presidential model, the executive is selected separately from the legislature. The Head of the Government is not a member of the legislature, but holds a fixed term of office, may not be defeated within a party caucus or on a vote of no-confidence in the legislature, and is responsible not to the legislature but to his own constituency. The people of American Samoa elect a Governor and Lieutenant-Governor, for example. They are physically and politically separate from the two houses of the Samoan legislature (or Fono). Power is therefore divided between the executive and the legislature: the two are not joined together inextricably as in parliamentary, or Cabinet, systems of government.

The Commonwealth of the Northern Marianas, Guam (an American territory governed under an "Organic Act" equivalent to a Constitution), and Palau reflect their American-inspired political development in adhering to a presidential model. Their chief executives are elected by the people for fixed terms of office. Other Pacific polities follow the American example; in a few cases, only in nomenclature. The Head of State may be designated a "President" (as on Nauru, or in the Marshall Islands) but in fact the person holding this office is not elected for a fixed term by the people nor is he separate from the legislative structure of government.

In Kiribati, the President—known as "Beretitenti"—is both Head of State and Head of Government. In other words, he combines the functions carried out elsewhere by the Prime Minister and the Governor-General. The Constitution of Kiribati provides that "A person who assumes the office of Beretitenti. . . shall not, by reason of the fact that he holds the office, cease to be a member of the Maneaba [i.e., the Legislature]." In the United Kingdom the idea of the Governor-General serving as an active member of Parliament would be novel indeed! Similarly, the basis for the American presidential model is separation of powers, so that constitutions which place the President within the legislature depart fundamentally from the American model. In certain important structural ways, therefore, some of the Pacific polities are challenging examples of innovation in democratic polities, establishing models of government structurally unfamiliar to political scientists acquainted exclusively with European and North American political structures.

The Head of State

The first topic relating to political structure addressed by Pacific Constitutions is the identity of the Head of State. In the Cook Islands, this reads:

Her Majesty the Queen in right of New Zealand shall be the Head of State of the Cook Islands.

The political status of the Cook Islands, in relation to New Zealand, has involved representation of the Head of State by a High Commissioner who has also been the representative of the Government of New Zealand in the Cook Islands. A slightly different situation has existed in Niue. Its Constitution opens by declaring:

The executive authority of Niue is vested in Her Majesty the Queen in right of New Zealand is accordingly the representative of Her Majesty the Queen in relation to Niue.

The Cook Islands and Niue are part of the New Zealand "realm" of Queen Elizabeth II. Tuvalu, as a fully independent polity, constitutes a realm of the Crown in its own right. Having affirmed Tuvalu's allegiance to Queen Elizabeth II, Her Heirs and Successors, in its preamble, the Tuvalu Constitution opens its first structural chapter forthrightly.

There shall be a Governor-General of Tuvalu who shall be Her Majesty's Representative in Tuvalu.

Fiji uses similar language to describe its Governor-General who is also designated "Commander-in-Chief," while PNG describes "The Head of State" in a more elaborate way:

- (1) Her Majesty the Queen
 - (a) having been requested by the people of Papua New Guinea, through their Constituent Assembly, to become the Queen and Head of State of Papua New Guinea; and
 - (b) having graciously consented so to become, is the Queen and Head of State of Papua New Guinea.

This wording establishes a constitutional relationship between the Queen and the people, in which it is declared, in effect, that she serves as Head of State at their pleasure. It is at their request, and according to their Constitution, that she is designated (further in this part of the PNG Constitution) "Elizabeth II, Queen of Papua New Guinea and Her other Realms and Territories, Head of the Commonwealth." Elsewhere the Head of State is given precedence "in rank over all other persons in (PNG)", and constitutional provisions referring to the Queen are extended to Her heirs and successors. The PNG Constitution describes the Governor-General within this section on "The Head of State" thusly:

Subject to and in accordance with this Constitution, the privileges, powers, functions, duties and responsibilities of the Head of State may be had, exercised and performed through a Governor-General . . .

The provisions of the Western Samoa Constitution are almost certainly unique in their description of "The Head of State" in several respects.

First, because of the existence of four royal titles in Samoan custom, the Constitution established the position of Head of State but declared that upon Independence the position would be held jointly by two persons who were specifically named (royal title-holders). Secondly, provisions in the Western Samoa Constitution provide explicitly for a change in political status to occur without constitutional amendment. That is, the Constitution itself has built in procedures for selecting a new Head of State, by a new method, when the present Head of State—both persons—ceases to occupy the office.

This is done quite efficiently. On the death of one of the named persons, the survivor continues to hold the office of Head of State. More dramatically:

On the death, resignation or removal from office of both the persons named in Clause (1) or of the survivor of either of them, this Article shall cease to be in force.

At that point, other provisions of the Constitution come into force, providing for selection of a new Head of State by the Legislative Assembly. In this manner, the writers of the Western Samoa Constitution have sought to develop procedures to alter the means by which their head of State is selected, with minimal disruption or disturbance. These allow the present holders of appropriate titles to hold this high office, so that the loyalties of people to them are not disturbed or provoked by procedures which envisage a different approach subsequently to the problem of selecting a Head of State. (How these procedures will work in the future, and to what effect, remains to be seen, of course.)

Constitutions of Pacific entities linked to the British Crown in one way or another describe the position of the representative of the Head of State (Queen Elizabeth II), known in most instances as "The Governor-General." The Tuvalu Constitution, for example, specifies that

No person shall be appointed to the office of Governor-General unless he is a citizen of Tuvalu.

A comparable intent is reflected in the Solomon Islands' constitutional requirement that

A person shall not be qualified for appointment to the office of Governor-General unless he is qualified for election as a member of Parliament . . .

The PNG Constitution contains the most elaborate provisions dealing with a Governor-General found in any Pacific Constitution. These provisions describe the functions, duties and responsibilities of the Head of State (and the Governor-General), qualifications for appointment of a Governor-General, procedures to be followed in appointing a Governor-General, procedures for dismissal, removal and suspension from office, procedures for resignation of the office, procedures for declaration of loyalty, term of office, and terms and conditions of employment. The space devoted to describing the position is, in a way, a measure of the gravity with which the office is viewed. It is often said that the position of Governor-

General is largely symbolic. Real power accrues to the post as well, as examples in Fiji and Australia during the mid-1970s revealed. However, even as symbolic offices, Governors-General may be expected to be important in new states, in which political symbols may be viewed seriously rather than cynically. The Governor-General, after all, symbolizes a new political entity. Who he is, and what he may properly do, are matters not to be taken lightly in such circumstances.

In PNG, as in Tuvalu and the Solomons, the Governor-General "must be a citizen . . . qualified to be a member of the Parliament." In addition, however, he must be "a mature person of good standing who enjoys the general respect of the community." Politically wise constitutionalists took the trouble further to note that the question of whether a proposed appointee is, or is not, "a mature person" (etc.) "is non-justiciable" (i.e., may not be raised in a court so as to block the appointment.)

The terms of office of Governors-General in Pacific polities vary to some degree. In the Solomons, a five-year term is specified. In PNG, the term of office is six years. Elsewhere, the Governor-General serves "during Her Majesty's pleasure" (Fiji) or "by her Majesty acting in accordance with the advice of the Prime Minister tendered after the Prime Minister has in confidence consulted the members of Parliament" (Tuvalu). The Tuvalu Constitution provides, as noted, for a role for Parliament, in both the appointment and removal of a Governor-General. This is the case in the newer Pacific polities which have established such an office. The PNG Constitution, for example, specifies that

. . . the Governor-General shall be appointed by the Head of State, acting with, and in accordance with, the advice of the National Executive Council given in accordance with a decision of the Parliament. A decision of the Parliament to nominate a person for appointment as Governor-General shall be made by a simple majority vote, in an exhaustive secret ballot . . .

Elsewhere the PNG Constitution provides that a Governor-General may not be appointed for a second term except by a "two-thirds absolute majority vote" of Parliament, while a third term is ruled out altogether. In the Solomons, the Governor-General "shall be appointed by the Head of State in accordance with an address from Parliament. . ." The Governor-General may be removed by "an address from Parliament supported by the votes of at least two-thirds of all the members thereof, for misbehaviour or for such other cause as may be prescribed by Parliament."

Executive Power—Cabinet and the Prime Minister

Descriptions of the Head of State lead smoothly to a delineation of the nature of the executive in many Pacific polities. This can be done through a transitional passage, as in the Solomons' Constitutions:

The Prime Minister shall keep the Governor-General fully informed concerning the general conduct of the government ... and shall furnish the Governor-General with such information as he may request with respect to any particular matter ...

This leads quite naturally into a description of the office of Prime Minister, other Ministers, and Cabinet as a whole. The sequence of offices and structures described in the Constitution has a neat political logic associated with it. Since in a parliamentary system the executive arises out of the legislature and is responsible to it, constitutional provisions describing the Prime Minister and Cabinet lead inexorably to sections describing the legislative branch (usually termed "Parliament" but known in the Pacific by indigenous names as well such as Maneaba in Maungatabul—as in Kiribati—or Olbiil Era Kelulau—as in Palau). (An alternative approach in Pacific Constitutions—see page 23—gives priority to the legislature as the political structure "closest to the people").

The Articles of Pacific Constitutions dealing with the Prime Minister and Cabinet, and the Legislature, address several related issues. How shall political leadership be chosen? To whom shall it be responsible? How will policy responsibilities be allocated? How frequently shall elections be held? What procedures shall be followed in selecting a Prime Minister, Cabinet Ministers, and Members of Parliament? How is the nation to be mapped for representational purposes? For the most part, developing procedures for these matters has been done concisely, and in a manner which well reflects established parliamentary practice.

Thus the Solomons' Constitution describes the choice of a Prime Minister thusly:

There shall be a Prime Minister who shall be elected as such by the members of Parliament from amongst their number . . .

Could the procedures for choosing a Prime Minister be described more succinctly than that? In this sentence, the qualifications for the office—the Prime

Minister must be an MP—and the electors responsible for the choice—the other MPs—are each clearly stated. The Constitution goes on to describe the selection of the remainder of Cabinet.

There shall be, in addition to the office of Prime Minister such other offices of Minister of the Government, not exceeding eleven or such greater number as Parliament may prescribe, as may be established by the Governor-General, acting in accordance with the advice of the Prime Minister: Provided that one of such offices of Minister of the Government shall be that of Deputy Prime Minister.

The Solomons' Constitution adds that "The Ministers . . . shall be appointed among the members of Parliament," which completes the statement of Ministerial qualifications. The constitutional requirement of a Deputy Prime Minister institutionalizes what may only be a convention in older parliamentary polities. Another point of interest is the effort to limit the size of Cabinet (for reasons of economy), in this case to twelve including the Prime Minister and the Deputy Prime Minister. In the much smaller polity of Tuvalu, the comparable constitutional provision declares that "There shall be . . . other offices of Minister of the Government, not exceeding 4 . . ." while in Kiribati it is stipulated that the Cabinet shall consist of "the Beretitenti, the Kauoman-ni Beretitenti (Vice-President) and not more than eight other Ministers, and the Attorney-General" appointed "from among members of the Maneabea ni Maungatabu."

How do governments fall in parliamentary systems? The Solomons' Constitution makes mandatory the traditional practice in the British political system.

If a resolution of no confidence in the Prime Minister is passed by Parliament by an absolute majority of the votes of members thereof the Governor-General shall remove the Prime Minister from office, whereupon the members of Parliament shall meet as soon as possible during the same session of Parliament to elect a new Prime Minister . . . A motion for a resolution of no confidence in the Prime Minister shall not be passed by Parliament unless notice of the motion has been given to the Speaker at least seven clear days before it is introduced.

In Tuvalu, "the office of Prime Minister shall become vacant . . . if a motion of no confidence in the Government receives in Parliament the affirmative votes of a majority of all the members." In the Pacific constitutions describing

parliamentary procedure, provisions are given as well for vacancies in any Ministerial office (including Prime Minister) arising out of resignation, election to the position of Speaker or Deputy Speaker, new parliamentary elections and, in the case of Ministers, revocation of their appointment to Cabinet "by the Governor-General, acting in accordance with the advice of the Prime Minister."

Cabinet is given a secure constitutional basis as well in these documents. The Solomons' Constitution declares:

There shall be a Cabinet . . . consisting of the Prime Minister and the other Ministers. The functions of the Cabinet shall be to advise the Governor-General in the government of Solomon Islands and the Cabinet shall be collectively responsible to Parliament for any advice given to the Governor-General by or under the general authority of the Cabinet and for all things done by or under the authority of any Minister in the execution of his office.

In this manner, the Westminster concept of Cabinet's "collective responsibility" is entrenched firmly in the Constitution itself, seeking to make mandatory what might otherwise be regarded as a quaint and somewhat ambiguous historical remnant. In the Marshall Islands, whose polity includes a mix of parliamentary and presidential features, Cabinet is described more elaborately still.

The executive authority of the Marshall Islands shall be vested in the Cabinet, whose members are collectively responsible to the Nitijela (legislature). Subject to law, the Cabinet may exercise elements of its executive authority directly, or through its individual members, and through other officers responsible to the Cabinet; but neither the provisions of any such law, nor any delegation of elements of the Cabinet's executive authority shall have the effect of diminishing the responsibility of the Cabinet and of each of its members to the Nitijela for the direction and implementation of executive policies.

This language establishes the primacy of the legislature over the executive. Through it, Cabinet and its individual Ministers are declared fully responsible to the legislature for the setting of policy goals and their execution in day-to-day administration. Further on in this Constitution, Cabinet's "executive authority" is described to "include . . . the following powers, functions, duties and responsibilities":

. . . the general direction and control of the government; . . . such legislative proposals as it considers necessary or desirable . . .; . . . conducting the

foreign affairs of the Marshall Islands . . . ; . . . making such provision as may be reasonable and necessary for . . . security . . . ; . . . power of reprieve and pardon; . . . establishing and maintaining such hospitals and other institutions and for providing such other services as may be reasonable and necessary for the public health; . . . establishing and maintaining . . . public school . . . ; . . . establishing and maintaining such other institutions and services... as may be reasonable and necessary to achieve an adequate standard of living for the people . . . , to enable them to enjoy their legal rights, and to serve their economic, social and cultural welfare . . .

These responsibilities were in addition to those relating to taxation and public expenditure, and relate as much to the social goals of government enumerated in the Marshalls' Bill of Rights as they do to the requirements of constitutional draftsmanship. In other Pacific polities using parliamentary institutions, description of the composition of Cabinet is followed by a core of provisions deemed of fundamental importance relating to Cabinet proceedings. In Tuvalu, for example, the Constitution reads:

The Cabinet shall be summoned by the Prime Minister. The Prime Minister shall, so far as is practicable, attend and preside at all meetings of the Cabinet. No business except that of adjournment shall be transacted in the Cabinet if objection is taken by any member present that there are less than 3 members present.

In the Solomons' Constitution too, there is a provision permitting Cabinet business to be delayed should notice be taken "that there are present less than a majority of the members" Subsequent constitutional provisions relating to Cabinet include: oaths to be taken by Ministers; assignment of administrative responsibilities to Ministers; responsibilities of other executive officers (including, in different constitutions, the Attorney-General, Commissioner of Police, Secretary to Cabinet (or Government), Director of Public Prosecutions, Leader of the Opposition (in Fiji); Procedures to be followed in granting a pardon or in other exercises of the "perogative of mercy." Some Pacific Constitutions describe an Executive Council, consisting of Cabinet and the Head of State (Western Samoa) or the representative of the Head of State. In Kiribati, a Council of State is described (consisting of the Chairman of the Public Service Commission, the Chief Justice, and the Speaker), and given executive functions in certain (temporary) circumstances. The Solomons' Constitution addresses the question of Prime Ministerial disability:

Whenever the Prime Minister is unable, by reason of illness or absence from Solomon Islands, to perform the functions conferred on him by this Constitution, those functions shall be performed by the Deputy Prime Minister or, if he too is unable to do so, the Governor-General may, by directions in writing, authorise some other Minister to perform those functions . . . and that Minister may perform those functions until his authority is revoked by the Governor-General. The powers of the Governor-General under this section shall be exercised by him in accordance with the advice of the Prime Minister: Provided that if the Governor-General, acting in his own deliberate judgment, considers that it is impracticable to obtain the advice of the Prime Minister owing to the Prime Minister's illness or absence, the Governor-General may exercise those powers without that advice and in his own deliberate judgment.

While these provisions may seem fraught with mischief, they do represent an effort to grapple with a plausible contingency. The Constitution of the United States of America was amended in 1967 to cope with Presidential disability, and the Solomons' effort seeks to establish procedures for Prime Ministerial disability compatible with a parliamentary system utilizing a Governor-General. The quality of the Governor-General's information, as well as his degree of initiative and political acumen, will have some considerable bearing on the likelihood of these provisions ever being activated. Constitutional provisions do not create certainties so much as opportunities, and whether these are accepted and utilized in appropriate situations will always depend on the character, energy and intelligence of the political participants concerned.

The Legislature

The legislature article in Pacific Constitutions varies greatly, depending on whether the system is presidential or parliamentary, federal or unitary, bicameral or unicameral. Presidential, federal and bicameral systems are the most complex, and may require lengthy and detailed sets of provisions. The national legislative powers will be enumerated with great care, so that they may be distinguished from those reserved to the executive branch, or to state and provincial governments. Bicameral legislatures involve detailed constitutional work to describe the two legislative chambers, distinguish them in their powers and responsibilities, establish their separate electoral procedures and representational bases, and, in turn, relate their separate and joint relationships to the executive.

The Chapter dealing with the legislature proceeds in a very straightforward manner. Nauru's Constitution reads:

There shall be a Parliament of Nauru. Subject to this Constitution, Parliament may make laws for the peace, order and good government of Nauru . . .

The Solomons' Constitution opens its discussion of the legislature with the following simple statement:

There shall be a national legislature for Solomon Islands, which shall consist of a single chamber and shall be known as the National Parliament of Solomon Islands.

Niue begins its description of "The Legislative Government of Niue" similarly:

There shall be in and for Niue a legislative Assembly to be called the Niue Assembly.

The remaining sections of the Chapter on the legislature describe: its size; procedures for electing the members; qualifications for membership; procedures in the event of vacancies; offices of Parliament (including Speaker, Deputy Speaker, and Clerk); aspects of parliamentary procedure; length of the parliamentary term; procedures for a dissolution of Parliament; oaths of members. The Solomons' Constitution describes a Constituency Boundaries Commission, whose recommendations (at least every ten years) are designed to safeguard "the principle that the number of inhabitants of each constituency shall be as nearly equal as is reasonably practicable" through boundary readjustments (allowing, however, for variations associated with population distribution, "the means of communication," and "ethnic affiliations"). An Electoral Commission is also established in this Constitution, with responsibilities over voter registration and the conduct of elections.

Constitutional provisions relating to Pacific legislatures, therefore, entrench as fundamental law procedures, practices and institutions relating to the formation of the legislature as well as the exercise by it of its mandated powers and duties. Provisions dealing with parliamentary procedure follow those detailing electoral arrangements.

Under "Legislation and Procedure in Parliament," the Solomons' Constitution includes: the objects of Parliament (to "make laws for the peace, order and good

government of Solomon Islands"); the format for bringing bills into effect (following approval by Parliament, the Governor-General gives assent, the Bill becomes law and is styled an "Act of Parliament," and "No law shall come into operation until it has been published in the Gazette"); the procedures for introducing bills in Parliament; the oaths to be taken by MPs; the right of Parliament to make and amend its own rules of procedure; the procedures for the election of a Speaker and Deputy Speaker; recognition of the existence of Opposition and Independent groups in Parliament; quorum requirements for the conduct of parliamentary business; a clause relating to the "privileges, immunities and powers of Parliament and its members"; a provision for public proceedings of Parliament except when "rules of procedure otherwise provide"; the timing of sessions of Parliament; voting procedures in Parliament; the timing of general elections; procedures for the dissolution of Parliament.

This is a lengthy agenda, but it is one fulfilled in other Pacific Constitutions too and, in some instances (as in PNG), at considerably greater length than in the Solomons' example cited above. The Pacific legislatures are presided over by a Speaker but there is some variation in the qualifications and procedures used for his selection.

For example, the Solomons' Constitution specifies that the Parliament shall elect a Deputy Speaker "from among its members" but a Speaker "from among persons who are qualified for election as a member of Parliament." Similarly, Niue's Constitution provides:

The Speaker of the Niue Assembly shall be elected to that office by an absolute majority of the members present and voting at a meeting of the Niue Assembly. Only a person who is qualified for election as a member of the Niue Assembly may be elected as Speaker. If any person elected as Speaker is, at the time of that election, a member of the Niue Assembly, he shall vacate his office as a member when he enters upon the duties of the Office of Speaker.

Such a practice reflects the quest for absolute political neutrality in the presiding officer in Pacific legislatures. The Cook Islands Constitution provides that the Speaker must be "qualified for election as a member of the Assembly," and the pool of eligible people includes "members of the Assembly who are not Ministers" and "persons who are not members of the Assembly."

The Tuvalu Constitution, by contrast, requires the Speaker to be elected "by the members of Parliament from among their number" (excluding Ministers). Entirely contrary provisions are found in the Kiribati Constitution, which states clearly that "The Speaker shall be elected by emembers of the Maneaba from among persons who are not members of the Maneaba."

Pacific Constitutions differ in details from one another in other areas as well. The Tuvalu Constitution stipulates that

Parliament, unless sooner dissolved, shall continue for 4 years from the date of the first sitting of Parliament after any general election and shall then stand dissolved.

Kiribati, the Solomon Islands, and the Marshall Islands schedule general elections every four years. PNG and Fiji require new elections within 5 years, and the Cook Islands (through the 1981 amendments) has altered its parliamentary term to 5 years as well. Niue, Tonga and Western Samoa agree on a three-year term, while several of the legislative chambers in the bicameral Pacific polities hold new elections every two years.

Many Pacific Constitutions stipulate that a new session of Parliament must be held within a set period of time following a general election. In Tuvalu, the Constitution requires that:

A session of Parliament shall be appointed to commence within one month of the date prescribed for polling at any general election.

In addition, parliamentary sessions must be held "so that a period of 12 months does not intervene between the end of one session and the first sitting of Parliament in the next session." In PNG, requirements for calling Parliament into session are even more stringent.

The Parliament shall be called to meet not more than 21 days after the day fixed for the return of the writs for a general election, and shall meet not less frequently than three times in each period of 12 months and, in principle, for not less than nine weeks in each such period.

Pacific Constitutions are not silent either about the appropriate language to be used in legislative debate. The Niue Constitution states:

The Speaker of any member of the Niue Assembly may speak in the Assembly either in the Niuean language or in the English language . . . Every bill

introduced into the Niue Assembly and every Act shall be in the Niuean language and also in the English language . . . the Niuean version and the English version of any record of proceedings in the Niuean Assembly or any Committee thereof . . . shall be equally authentic. . .

The Niue Constitution guarantees as well that the remarks of the Speaker or of any member of the Assembly shall be translated into English or Niuean upon request, "as the case may be." In Western Samoa, the Constitution requires that

All debates and discussions in the Legislative Assembly shall be conducted in the Samoan language and the English language. The Minutes and the debates of the Legislative Assembly, every bill introduced therein, every paper presented thereto, and all minutes of proceedings, minutes of evidence and reports of committees of the Assembly shall be in the Samoan language and the English language.

The Cook Islands Constitution gives English and "the Maori language as spoken in Rarotonga" official status, in declaring that

All debates and discussions in the Legislative Assembly shall be conducted in the Maori language as spoken in Rarotonga and also in the English language.

The Fiji Constitution establishes the "official language" as English, but expressly permits "any member of either House" to "address the Chair in the House of which he is a member in Fijian or Hindustani."

The Kiribati Constitution provides for an independent Salaries Tribunal "to review the salaries and allowances of members." The PNG Constitution establishes a "Parliamentary Salaries Tribunal" and a "Parliamentary Service, separate from the other State Services" headed by the Clerk of Parliament but responsible to the Speaker.

The Judiciary

Following the description of the executive and legislative components of government, Pacific Constitutions outline their country's judicial structure. The Niue Constitution is fairly typical of this chapter. It describes the High Court, the Land Court, the Land Appellate Court, and Justices of the Peace, while detailing as well provisions for Appeals from the High Court, procedures for the appointment and removal of judges, and the prescription of the appropriate judicial oath and oath of allegiance. It is noted too that the salary of "any Judge or Commissioner...

shall not during the term of his office be reduced . . .," in an effort further to secure judicial offices from political harassment.

Other polities described their judicial structures succinctly, with some interesting variations. The Marshalls' Constitution describes the judicial power as vested in "a Supreme Court, a High Court, a Traditional Rights Court, and such District Courts, Community Courts and other subordinate courts as are created by law." The Western Samoan Constitution establishes a Judicial Service Commission to advise the Head of State on most judicial appointments, promotions, transfers and dismissals. The Solomons' chapter on "The Legal System" commences with a reminder that Parliament "shall have particular regard to the customs, values and aspirations of the people of Solomon Islands." Following description of the High Court and the Court of Appeal, the powers of the Director of Public Prosecutions and the Public Solicitor ("to provide legal aid, advice and assistance to persons in need . . .") are detailed as well. The Commonwealth of the Northern Marianas describes the "Judicial Branch" (consisting of a Commonwealth Trial Court and a Commonwealth Appeals Court), establishes a six-year term of office for judges (who must be "at least thirty years of age"), develops procedures for the removal of judges by impeachment ("for treason, commission of a felony, corruption or neglect of duty"), and places limitations on the activities of judges.

A full-time judge may not hold another compensated government position or engage in the practice of law. A judge may not make a direct or indirect financial contribution to a political organization or candidate, hold an executive office in a political organization, participate in a political campaign, or become a candidate for elective public office without resigning judicial office at least six months before becoming a candidate.

Some Constitutions specify retirement ages for judges as well. In the Fiji Constitution this is given as "sixty-two years or such higher age as may be prescribed by Parliament." The Palauan Constitution declares that "All justices of the Supreme Court and judges of the National Court shall hold their offices during good behavior. They shall be eligible for retirement upon attaining the age of sixty-five (65) years." Chapters on the judiciary describe, in straightforward terms, the national court structure and such other offices as are related to it. Procedures for judicial appointments and dismissals, salaries, promotions, transfers and appointments of justices of the peace are among the sundry matters reviewed.

Other judicial offices, such as prosecutor or the public defender, may also be described. The role of the Courts in interpreting the Constitution is also outlined, and a description of these provisions will follow.

Administrative Structures, Finance and Traditional Authority

Pacific Constitutions diverge to some extent once the major structures of government have been described. All, however, include a chapter on "Finance" and another on "The Public Service." For example, the Fiji Constitution establishes "one Consolidated Fund" for "all revenues or other moneys raised or received" for Government purposes. Procedures for public expenditure are laid down, with responsibilities established for the Minister of Finance and Parliament in the review of estimates, the authorization of expenditure, withdrawals of public funds, and the payment of public officials' salaries. Provisions relating to the public debt are also included here, and an independent public office—the Auditor-General—"not subject to the direction or control of any other person or authority" is constitutionally mandated as well.

The Cook Islands and Niue Constitutions also describe a framework for the raising and spending of public monies, each noting that "no taxes shall be imposed except by law." For these polities, independent scrutiny is constitutionally defined as a function of the Audit Office of New Zealand. The Marshall Islands' Constitution provides for legislative control of public revenue and expenditure, Cabinet responsibility for budget proposals (to the legislature), and the establishment of a General Fund with appropriate procedures for appropriations and withdrawals. The Palau Constitution establishes a National Treasury, and includes provisions for the sharing of "foreign aid" between the "national government and all the states in a fair and equitable manner." The FSM Constitution creates both a General Fund and a Foreign Assistance Fund, as well as procedures for the distribution of the latter so that "each state shall receive a share equal to the share of the national government and to the share of every other state." Budgetary procedures are also constitutionally elaborated, while the Public Auditor, although "independent of administrative control" except for an annual reporting requirement, may be removed from office "for cause" by 2/3 vote in the legislature.

Nauru follows the pattern of constitutionally mandating taxation and expenditure practices too, including in addition requirements for a separate "Long Term Investment Fund" foreshadowing the depletion of the island's phosphate

deposits (its principal source of revenue). The Kiribati Constitution augments its statement of fundamental financial procedure and responsibility with a description of the legislature's Public Accounts Committee. In this manner, a parliamentary committee is assigned a constitutional status in the review of Government accounts and the investigation of unauthorized or excessive Government spending. Despite the role given to Parliament, and Cabinet, in the development of financial policies embracing taxation and public expenditure, the Pacific Constitutions each devote a separate Article to Finance rather than incorporating relevant provisions in chapters on legislative and executive powers. This editorial decision reflects the paramount importance which the development of accountability for the raising and spending of public monies has had in the evolution of democratic government. While some members of the public might see little difference in practice between "taxation without representation" and taxation with it, Pacific Constitutions nevertheless describe with some care the procedures and institutions involved in the management of public funds.

Fiji's Constitution reserves a separate chapter as well for description of its public service (and several specialized commissions), followed in turn by another chapter exclusively for the office of Ombudsman (describing its powers, jurisdiction, procedures and so forth). Following elaboration of a "leadership code," the Solomons' Constitution describes the Ombudsman and, subsequently, several service commissions constituting the administrative arm of government (Public Service Commission, Judicial and Legal Service Commission, Police and Prisons Service Commission). These important provisions relate to the power to make appointments to senior, non-elective offices and describe their tenure of office, grounds for removal, appeals procedures and so forth.

A public Service Commission is established in Tuvalu as well, with powers of appointment (through the Governor-General) of public officers, magistrates, and certain offices in the Tuvalu Police. The Cook Islands Constitution establishes "a Cook Islands Public Service" which is "under the control of Secretary of the Premier's Department." The Niue Public Service is constitutionally described as well, with the Secretary to the Government described as "the permanent head of the Niue Public Service and the chief administrative officer of the Government of Niue."

Despite some variations in language and comprehensiveness of detail, the intent of the recent Pacific Constitutions is clear. The Public Service, particularly some of its major components, merits special constitutional attention in its own right. This is a departure from Constitutions drafted during earlier times, when the responsibilities of Government were not viewed so widely, and when permanent bureaucracies were not contemplated with a mingling of enthusiasm and resignation.

Finally, many Pacific Constitutions devote special attention to "customary law", "traditional rights" and traditional authorities. The Cook Islands Constitution includes a House of Arikis, comprised of traditional authorities charged to "consider such matters relative to the welfare of the people of the Cook Islands as may be submitted to it by the Legislative Assembly for its consideration. . .". The Palauan Constitution describes a Council of Chiefs, established to "advise the President on matters concerning traditional laws, customs and their relationship to this Constitution and the laws of Palau." In a real sense, the American Samoan Senate is a House of Chiefs, with full legislative powers. The Western Samoan Parliament, similarly, is a powerful traditional body with full legislative powers. In the Marshalls, in addition to the Traditional Rights Court dealing with "questions relating to titles or to land rights or to other legal interests depending wholly or partly on customary law and traditional practice," there is a Council of Iroij comprising traditional leaders, empowered to request reconsideration of "any Bill affecting the customary law, or any traditional practice, or land tenure, or any related matter." The FSM makes provision for a Chamber of Chiefs as well.

There is, in short, a widespread consensus about the need to provide some kind of constitutional basis, or structure, recognizing and representing traditional authority. This may involve establishing a new structure or, alternatively, redefining an existing institution so as to ensure that areas of traditional interest and importance are fully recognized. To some extent, including a traditional structure within the Constitution is a symbolic gesture, as in itself this may contribute little to the effort to control and manage social change. The significance of symbolic gestures ought not be minimized, however. The Constitution itself may become a powerful political system in its own right, particularly if its language asserts goals, establishes value commitments and develops institutions capable of defending and promoting a national-cultural identity.

With land rights so central in traditional societies, not unexpectedly land receives some special attention in Pacific Constitutions. In the Solomons, a separate chapter devoted to land declares:

The right to hold or acquire a perpetual interest in land shall vest in any person who is a Solomon Islander and only in such other person or persons as may be prescribed by Parliament.

The Palauan Constitution pays attention to land from a different angle. In addition to declaring that "No tax shall be imposed on land" (a view likely to be supported by New Zealand ratepayers), the Constitution reads:

Harmful substances such as nuclear, chemical, gas or biological weapons intended for use in warfare, nuclear power plants, and waste materials therefrom, shall not be used, tested, stored, or disposed of within the territorial jurisdiction of Palau without the express approval of three fourths (3/4) of the votes cast in a referendum submitted on this specific question.

The Micronesian State Constitutions direct their attention to land and related resources as well. The language of the charter of the Kosrae District Government (one of the states in the FSM) is evocative.

The environment of Kosrae District, to include, but not limited to, the land, sea, and air, is a public trust of which all Kosraeans, living and yet unborn, are beneficiaries. As trustee, the Kosrae District Government is obligated to act in a manner calculated to assure the protection of the air, water and natural resources and the public trust therein from pollution, impairment or destruction . . . The Kosrae District Government shall promote the conservation and development of agricultural, marine, mineral, forest, water, land, and other natural resources. The District Government is empowered to conserve and develop Kosrae's natural beauty and objects and places of historical or cultural interest . . . Radioactive, toxic chemical, or other harmful substances may not be tested, stored, used, or disposed of within the jurisdiction of Kosrae District without the express approval of the District Government, which may be granted only in a manner to be prescribed by law.

These citations once again underscore the innovative character of Pacific Constitutions when viewed against the background of comparative political studies. Pacific Constitutions identify a range of judicial, administrative (such as the Ombudsman) and traditional structures responsible for the protection of individual

and collective rights and resources. Certain constitutions go beyond this structural work by seeking to identify for special protection the natural resources of the country within a special constitutional Article. Such constitutional craftsmanship skillfully identifies an important area of convergence between traditional values and contemporary aspirations, and goes further by giving these values and aspirations formal statutory expression.

Constitutional Change--Interpretation and Amendment

A difficulty in introducing a Constitution in societies following a parliamentary model is that a document promulgating a fundamental law must bind each of the legal, political and governmental institutions within that society. Pacific constitution-makers have perceived quite clearly that the doctrine of parliamentary supremacy requires some modification in such circumstances, for if Parliament can flout the Constitution the document itself becomes fictional. Thus constitutional supremacy is imperative if Pacific Parliaments are to be restrained from violating constitutional provisions (intentionally or otherwise). This objective may be somewhat easier to achieve when constitutional documents arise through extraordinary means (such as a convention of elected delegates, quite separate from the legislature) and are ratified directly by the people. In this manner, the supremacy of the institutions described therein—Parliament, Cabinet, the Prime Minister and so on—is modified, in principle, through their description and definition in a document not of their own making. In such circumstances the Constitution, and all it contains and expresses, may more readily be regarded as the superior law, one embodying the will of the people as articulated directly through an extraordinary electoral process.

In any event abstract arguments about the impossibility of binding Parliament are of little value when parliamentary democracies, existing in and of this world, operating under written Constitutions, can in fact be identified and examined. The Pacific polities whose recent constitutional experience forms the framework for this investigation share many political, legal and governmental institutions and procedures (as this review has demonstrated). All have developed written Constitutions with provisions for constitutional interpretation and the scrutiny of parliamentary performance according to constitutional criteria. This challenges the traditional British view that Parliament is the highest court in the land, and that consequently no governmental institution (such as another court) may hold an Act of Parliament (or its execution) invalid. Indeed this view also rules out the

possibility of binding Parliament, according to the language of a written Constitution, for the actions of one Parliament (including the adoption of such a Constitution) may be repudiated by its successor through a simple majority. Thus the Pacific constitutions following the parliamentary model constitute a significant departure from the older Westminster approach.

The Solomons Constitution describes itself as "the supreme law of Solomon Islands" and declares further that "if any other law is inconsistent with this constitution, that other law shall, to the extent of the inconsistency, be void." But how is the supremacy clause to be enforced? Who will determine when an Act of Parliament is to be overturned as inconsistent with the Constitution? In its Bill of Rights, the Solomon Islands' Constitution states that:

. . . if any person alleges that any of the provisions (of the Bill of Rights) has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person) then, without prejudice to any other action with respect to the same matter which is lawfully available, that person... may apply to the High Court for redress.

Elsewhere in the Solomons' Constitution, powers are given to the High Court to deal with constitutional questions when petitioners have "standing" (i.e., are "likely to be affected" by the issue raised), although constitutional litigation in matters relating to parliamentary membership (already reserved to the High Court for decision), the Ombudsman's activities, and aspects of the Governor-General's role has been restricted. Apart from these areas, the High Court is empowered "to make a declaration" that provisions of the Constitution have been "contravened" and to grant "such remedy . . . as the Court considers appropriate." Thus in broad terms Parliament, Cabinet and the Prime Minister must ensure that their behavior conforms to constitutional requirements as interpreted and enforced by the High Court. While Parliament continues to "make the law," it is not "above" the fundamental constitutional law organizing the polity as a whole.

Not surprisingly, the Tuvalu Constitution—both in its Bill of Rights and in its chapter on the judiciary—establishes a comparable set of relationships between the High Court, the Constitution and the other agencies and branches of government. The Tuvalu Constitution addresses the point squarely:

Subject to the provisions of this Constitution, the High Court shall have original jurisdiction to hear and determine any question as to the interpretation of this Constitution.

Powers of constitutional interpretation are assigned to the High Court in the Kiribati Constitution as well, in its chapters on the judiciary and the "Protection of Fundamental Rights and Freedoms of the Individual." In Western Samoa, Part VI—"The Judiciary"—defines the jurisdiction of the Supreme Court thusly:

. . . where in any proceedings before another court (except the Court of Appeal) a question arises as to the interpretation or effect of any provision of this Constitution, the Supreme Court may, on the application of any party to the proceedings, determine that question . . .

In addition, the Court of Appeal in Western Samoa may hear appeals from the Supreme Court in cases that involve "a substantial question of law as to the interpretation or effect of any provision of this Constitution." Moreover, Part II—"Fundamental Rights"—establishes that any person "may apply to the Supreme Court . . . to enforce the rights conferred" and that, further, the Supreme Court "shall have power to make all such orders as may be necessary and appropriate to secure to the applicant the enjoyment of any of the rights conferred." The Court of Appeal, once more, may make determinations on such matters following a decision of the Supreme Court.

In Western Samoa, therefore, the power of the courts to be the final arbiter in constitutional matters is firmly established within the Constitution (despite some conflicts in practice with Samoan custom). In Nauru, similarly, the "Supreme Court shall . . . have original jurisdiction to determine any question arising under or involving the interpretation or effect of any provision of this Constitution." In the Cook Islands, as well, constitutional interpretation has been reserved to the courts, a practice extended under the 1981 amendments providing appeals procedures in cases involving "fundamental rights and freedoms."

The American-influenced Pacific polities, not unexpectedly, prescribe broad judicial powers in constitutional cases. In the Marshalls, the supremacy Article includes a section on "Enforcement of this Constitution" which gives the "Attorney-General acting in the name of the people of the Marshall Islands," as well as "all persons directly affected by an alleged violation of this Constitution," rights "to complain of such violation" before "any court of general jurisdiction." In the

Article on the judiciary, the Supreme Court is given "final authority to adjudicate all cases and controversies properly brought before it . . ."

In the FSM Constitution, the Supreme Court is described as "the highest court in the nation." The Supreme Court is given the power to "review cases heard in the national courts, and cases heard in state or local courts if they require interpretation of this Constitution, national law, or a treaty." Although so empowered, the Constitution also enjoins the Supreme Court to ensure that its decisions are "consistent with this Constitution, Micronesian customs and traditions, and the social and geographical configuration of Micronesia."

Vesting powers of constitutional interpretation with the Courts follows the American example. In the American system, however, Supreme Court judges are expected to rule on constitutional matters only when these arise out of genuine "cases and controversies." Justices are not expected to provide legislators or chief executives with advisory opinions on the likely constitutionality of alternative courses of action. In Western Samoa, however, avoidance of hypothetical interpretive comment is not made easy by the following constitutional injunction:

The Head of State, acting on the advice of the Prime Minister, may refer to the Supreme Court for its opinion any question as to the interpretation or effect of any provision of this Constitution which has arisen or appears likely to arise, and the Court shall pronounce its opinion on any question so referred to it.

In Niue, on certain types of legislation (dealing with land, criminal procedure, and social matters such as marriage and divorce), the Constitution provides for comment by the Chief Justice upon invitation from the Niue Assembly. This is an invitation not easily ignored:

Whenever . . . the Chief Justice is invited to comment on the legal, constitutional, and policy issues raised by any Bill or amendment, he shall as soon as possible, and in any case within one month after receiving the papers relating to the Bill or amendment, respond to that invitation . . .

It seems clear that there is a consensus within the contemporary Pacific, amongst polities following a variety of governmental models, about the desirability of constitutionally providing the judiciary with a decisive role in the interpretation and elaboration of fundamental law. In every case Constitutions grant to some

judicial agency a final declarative power with respect to constitutional matters in their broadest sense.

Constitutional language may acquire different meanings according to circumstance, and it seems clear that courts of law will play the major role in stating new meanings as Pacific constitutions evolve. However, while constitutions are intended in some respects to forestall change, by entrenching certain procedures and values, they normally contemplate the possibility of adaptation and revision as well. Thus Pacific Constitutions provide procedures whereby these documents may be amended.

The Tuvalu Constitution provides one approach to constitutional change. It reserves the amending power to Parliament itself, subject however to a special majority (2/3).

. . . Parliament may by Ordinance alter this Constitution. A bill for an Ordinance to alter any provision of this Constitution shall not be passed by Parliament unless it is supported at its second reading in Parliament by the votes of not less than 8 members (of 12) of Parliament.

In Kiribati a similar principle is followed, with some modifications. The amending power is assigned to Parliament, and a Bill to alter "any of the provisions of this Constitution" must receive at least two-thirds support within Parliament. In addition, the amendment Act may not pass unless consideration of it is "deferred after its first reading . . . until the next following meeting. . ." However, Parliament's ability to repeal, modify, amend, suspend or violate the Constitution through these procedures is restricted through two other provisions. Another section of the Constitution is intended to protect an ethnic minority (the Banabans) within Kiribati, for the Article dealing with their rights may not be amended without the approval of the Banaba MP.

In addition, any proposal to alter "Chapter II of this Constitution"—i.e., the Bill of Rights—must follow different procedures, ones intended to identify the "rights and freedoms" of the people as superior to the other constitutional components which may be more easily changed. Thus, such legislation "shall not come into operation unless . . . submitted to a referendum in which all persons who are registered as electors for the purposes of a general election shall be entitled to vote and unless those provisions have been supported by the votes of not less than two-thirds of all the persons entitled to vote in the referendum." This is a

significant obstacle indeed, for the designated majority for change is two-thirds of the eligible electorate rather than two-thirds of the participating voters.

In the Solomons' Constitution, a two-tier approach to constitutional change is also introduced. In such case, bills to amend the Constitution must be clearly identified as having that purpose (i.e., "a Bill for an Act of Parliament to alter the Constitution") and notice of such legislation must be given to the Speaker "at least four weeks before the first reading of the Bill in Parliament." Most provisions of the Constitution may be altered by Parliament when amending legislation receives the support of "not less than two-thirds of all the members of Parliament" on two separate readings. However, a three-quarters vote of all the members, on two separate readings, is required for amending acts altering: provisions for constitutional change; the Bill of Rights; the chapter on "The Legal System"; provisions with respect to the Ombudsman; sections dealing with the electoral system; the position of the Auditor-General.

In Nauru, Parliament's power to alter the Constitution is modified as in Kiribati and the Solomon Islands. Most constitutional amendments require "an interval of not less than ninety days between the introduction of the proposed law in Parliament" and its passage, as well as approval by "not less than two-thirds of the total number of members of Parliament." However, parliamentary efforts to change provisions considered to be of more fundamental importance would involve approval of the proposals by the public in a referendum held specifically for that purpose. The specified majority is "not less than two-thirds of all the votes validly cast." The constitutional areas covered by this requirement include: the supremacy clause; the Bill of Rights; certain Articles dealing with the President, the Parliament, and the timing of general elections; certain Articles dealing with Finance; certain citizenship provisions; certain transitional provisions (relating to Independence); the amending procedures.

The Cook Islands Constitution also employs a dual approach to the amending task. Constitutional amendments require "at both the final vote . . . and the vote preceding that . . . the affirmative votes of not less than two-thirds of the total membership (including vacancies)" as well as a ninety-day gap "cooling off" period between the two aforementioned votes. In addition, however, changes to the Act establishing the Constitution, and to two Articles of the Constitution, require—in addition to conformity with the procedures summarized above—support by at least two-thirds "of the valid votes" cast in a public referendum. The areas of

constitutional change requiring public approval are: the supremacy clause; the declaration of the Cook Islands as "self-governing"; provisions providing for the exercise through "consultation" of New Zealand's responsibilities for the Cook Islands' "external affairs and defence"; provisions relating (in effect) to the Cook Islanders' position as New Zealand citizens; the position of the Queen as Head of State; the amending procedures themselves.

The Niue Constitution places further limits on the legislative power to alter the fundamental laws. Constitutional amendment in Niue requires in every case parliamentary approval (by a two-thirds vote "of the total membership of the Assembly" in two separate votes, the latter taken "at least 13 weeks" after the prior vote) and approval by the electors in a special poll. In most cases, the Niue electorate need only approve the Assembly's proposed amendment by a majority vote. However, "two-thirds of the votes validly cast" is the specified majority for amendments to: the amending Article; the Article dealing with appointments to the Niue Public Service; the Article describing the "executive authority ... vested in Her Majesty the Queen in right of New Zealand"; and sections of the Act establishing the Constitution and providing for self-government, continued New Zealand citizenship for Niueans, a continued New Zealand role in external affairs and defence, "a continuing responsibility of the Government of New Zealand to provide necessary economic and administrative assistance," "Co-operation between New Zealand and Niue," and the appointment of a New Zealand Representative in Niue.

Elsewhere in the Pacific, the legislative role in constitutional change is more diminished still. In the Northern Marianas, amendments may be proposed by constitutional conventions assembled especially for such a purpose, the legislature (by a three-fourths vote of the members of each legislative chamber) or by the people themselves via a petition. Moreover, all proposed amendments (to become valid) must be approved by the voters at a referendum held in conjunction with the "next regular general election." Similarly, in the FSM, the people may propose, and must approve, all amendments to their Constitution. Moreover, an amendment is not accepted unless "approved by 3/4 of the votes cast . . . in each of 3/4 of the states." In Palau, where constitutional change may be begun by a Convention, a petition ("signed by twenty-five percent . . . of the registered voters"), or by legislative action (a "resolution adopted by not less than three-fourths . . . of the

members of each House"), approval requires a "majority of the votes cast... in not less than three-fourths (3/4) of the states."

Some of the Pacific Constitutions have extended their innovative approach to the amending provisions. Responding to recent interest in "sunset" legislation, in which statutes lapse after a specified period of time unless re-enacted, several of the newly drafted constitutions apply the logic of "sunset" laws to the Constitution itself. Reflecting Thomas Jefferson's view that a "perpetual Constitution" must be undemocratic, sapping the people's ability thoughtfully to govern themselves, several Pacific Constitutions require that the voters be asked, at regular intervals, whether they would like to see the Constitution reviewed. This approach was used by the French revolutionaries, in their Constitution of 1791, but despite Jefferson's praise for the principle it has not been very widely accepted, so that its re-emergence in the Pacific is somewhat unexpected.

In PNG, the Constitution provides for the establishment of a "General Constitutional Commission" three years after Independence to "inquire into the working of this Constitution." The Palau Constitution requires that

. . . at least once every fifteen (15) years, the (legislature) may submit to the voters the question: "Shall there be a Convention to revise or amend the Constitution?" If a majority of the votes cast upon the question is in the affirmative, a Constitution Convention shall be convened within six (6) months thereafter, in a manner prescribed by law;

In the State of Hawaii, the Constitution requires that the voters be polled, in a comparable manner, every ten years. In the FSM, a question identical to the one in the Palauan document is to be submitted to the voters every 10 years, with delegates to the convention to be chosen no later than the next regular election. In the Northern Marianas, the question reads: "Shall there be a constitutional convention to propose amendments to the Constitution?" This question is to be submitted to the people by the legislature, or the Governor, "no later than seven years after the effective date of this Constitution . . ." In addition, a petition to place this question on the ballot "at the next regular general election" can, with sufficient support, lead to the convening of a constitutional convention. (In either case, "two-thirds of the votes cast" is the specified requirement in this referendum.)

These constitutional provisions in effect make Pacific constitutional documents which incorporate them experimental in character. By subjecting the operation of their Constitution to periodic review, Pacific constitution-makers have erected procedures designed to prevent the Constitution itself from becoming unchangeable, an undemocratic instrument, an obstacle to democratic government rather than a framework for its development. Indeed most Pacific polities grant their peoples a greater role on constitutional issues than citizens of the United States of America (for example) presently enjoy (at least in relation to the central government). It is evident therefore that the introduction of a written Constitution in newly independent and self-governing Pacific polities has been seized upon as an exceptionally promising opportunity for a general enlargement of the public's civic responsibilities.

CONSTITUTIONAL PROCESSES: A SUMMING UP

Most of the Pacific Constitutions adopted recently arise out of broadly comparable political circumstances. The Constitutions of Papua New Guinea, the Solomon Islands, Tuvalu, Kiribati, Western Samoa, Vanuatu, and Nauru were drafted to define the political administrative and judicial institutions of newly independent countries. The Cook Islands and Niue are governed under constitutional documents which reflect their continuing relationship with New Zealand. In Micronesia, the American-governed trust territory has fragmented, leading to the emergence of four political entities each equipped with institutions defined by constitutional means. These entities—all of them more or less self-governing, none of them fully autonomous as they remain associated with the United States through different agreements—have elaborated constitutional frameworks which differ significantly from one another and from the other Pacific states. Elsewhere in the Pacific there are constitutional documents associated with islands differing markedly in their political status. Guam—an American territory—has an "Organic Act." American Samoa—another American territory less integrated into the American system—nevertheless has a Constitution of its own. The French possessions of New Caledonia and French Polynesia are governed under statutes defining their institutions' powers within the French political network.

The Pacific is marked therefore by constitutional diversity, but it is a diversity which reflects the different political status of Pacific polities as well as their differing responses to the problems of governmental organization. In most instances, the constitutions reflect the sentiments of the people in the entity concerned shaped, in turn, by the circumstances by which independence, or self-government, has been achieved. These are historical moments which have now passed.

The general shape of the documents which have emerged from these collective deliberations should be clear. To review, these constitutional documents include: a preamble; a clause establishing the supremacy of the Constitution; a Bill of Rights; separate Articles describing the Head of State, the Executive (Prime Minister and Cabinet), the Legislature (Parliament), the Judiciary, the Public Service, and possibly other institutions as well; provisions for constitutional interpretation and change.

The processes by which these constitutions came to be introduced may be summarized as well. Several of them were enacted by the British Parliament, as part of the Independence package. In certain polities, the legislature has played the central role in drafting, and approving, the document. Elsewhere special conventions, comprising delegates popularly elected, have been assembled to draft constitutional documents which have been, in turn, submitted to the voters for their approval.

The process by which a constitution is elaborated is important both legally and symbolically. The selection of a particular procedure may depend on whether the proponents of a Constitution seek to introduce change or to provide an obstacle to change (by giving established structures and procedures constitutional expression). The process of constitutional draftsmanship, however, is only partially involved with the choice of procedure. Pacific Constitutions, while heterogeneous in their details, follow identifiable patterns because they draw upon a long tradition in constitution-making. For the most part, their binding procedures are set out in language at once elegant and concise. Clarity of writing and a felicity of expression appear to be gifts valued highly among constitutional authors, and rightly so. For a document identifying the nation's aspirations, defining its collective institutions, and elaborating its fundamental commitments in law and politics, is both legal tool and educational instrument, and needs to be written with both ends in view.

The introduction of a written constitution inaugurates an entire sequence of political, legal and social changes.² The way in which the political struggle is articulated and waged alters dramatically when a legally enforceable constitution frames the battle. Certain major political customs and conventions acquire the near-permanence they merit, while in certain instances the formulation of a constitution may provide the opportunity for anomalous attitudes and inadequate procedures to be overcome (or, alternatively, to be entrenched still more deeply into a nation's political life).

Among the consequences of Pacific constitutions may be included, as well, an excessive reliance upon litigation, important delays in decision-making, and a transfer of authority from elected representatives (and from the general public) to lawyers and judges (in each case, often non-indigenous). Nevertheless, at this point in the political evolution of the Pacific, it would be premature other than to view the Pacific Constitutions, embodying a respect for civil liberties and the procedures of democratic choice-making, as well as a due regard for the democratic heritage and more deep-rooted traditional values, as anything other than a positive and beneficial development.

Notes

1. Copies of Pacific Constitutions, quoted herein, were obtained from a variety of sources, among the most important being the United States Government (Department of the Interior) and the New Zealand Ministry of Foreign Affairs.
2. See Stephen Levine, The New Zealand Political System (Sydney: George Allen & Unwin, 1979), pp. 28-30. Features of Pacific islands' constitutions were discussed in a quite different context in Stephen Levine, A Constitution and Bill of Rights for New Zealand—An Idea Whose Time Has Come?, Public Sector Research Papers, Volume II, Number 4, 1981. An important influence in shaping the direction of this inquiry into Pacific constitutions has been the work of Professor Ivo Duchacek. See his Comparative Federalism: The Territorial Dimensions of Politics (New York: Holt, Rinehart and Winston, 1970) and his Power Maps: Comparative Politics of Constitutions (Santa Barbara, California: ABC-Clio, 1973).

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Stephen Levine is a Senior Lecturer in Political Science at Victoria University of Wellington. He is the editor of several volumes on New Zealand political behavior and has written numerous studies of New Zealand politics and elections. These include The New Zealand Political System and the introductory chapter to New Zealand at the Polls: The General Election of 1978, as well as studies of the 1975 and 1978 New Zealand general elections for Parliamentary Affairs (the journal of the Hansard Society for Parliamentary Government). During 1981 Dr. Levine served as Visiting Professor of Political Science at the University of Hawaii at Manoa, in Honolulu, where he lectured on New Zealand politics and on the politics of the Pacific Region (following a research trip through several Polynesian countries). He is the co-author of a recently published booklet, The Independent Politics of the Pacific, as well as several papers dealing with political change in the Pacific. In 1981 he wrote a monograph for the New Zealand Institute of Public Administration, A Constitution and Bill of Rights for New Zealand: An Idea Whose Time Has Come?, for the Institute's Public Sector Research Papers series, and co-authored a best-selling study of New Zealand's general election, Election '81: An End to Muldoonism? Dr. Levine is editor of Political Science and, with colleague Dr. Raj K. Vasil, has agreed to produce a multi-volume study of Pacific island governments and political processes for the University of Queensland Press. Drs. Levine and Vasil are the authors of a forthcoming study of Maori politics in New Zealand, Maori Political Perspectives, scheduled for release in mid-1982.